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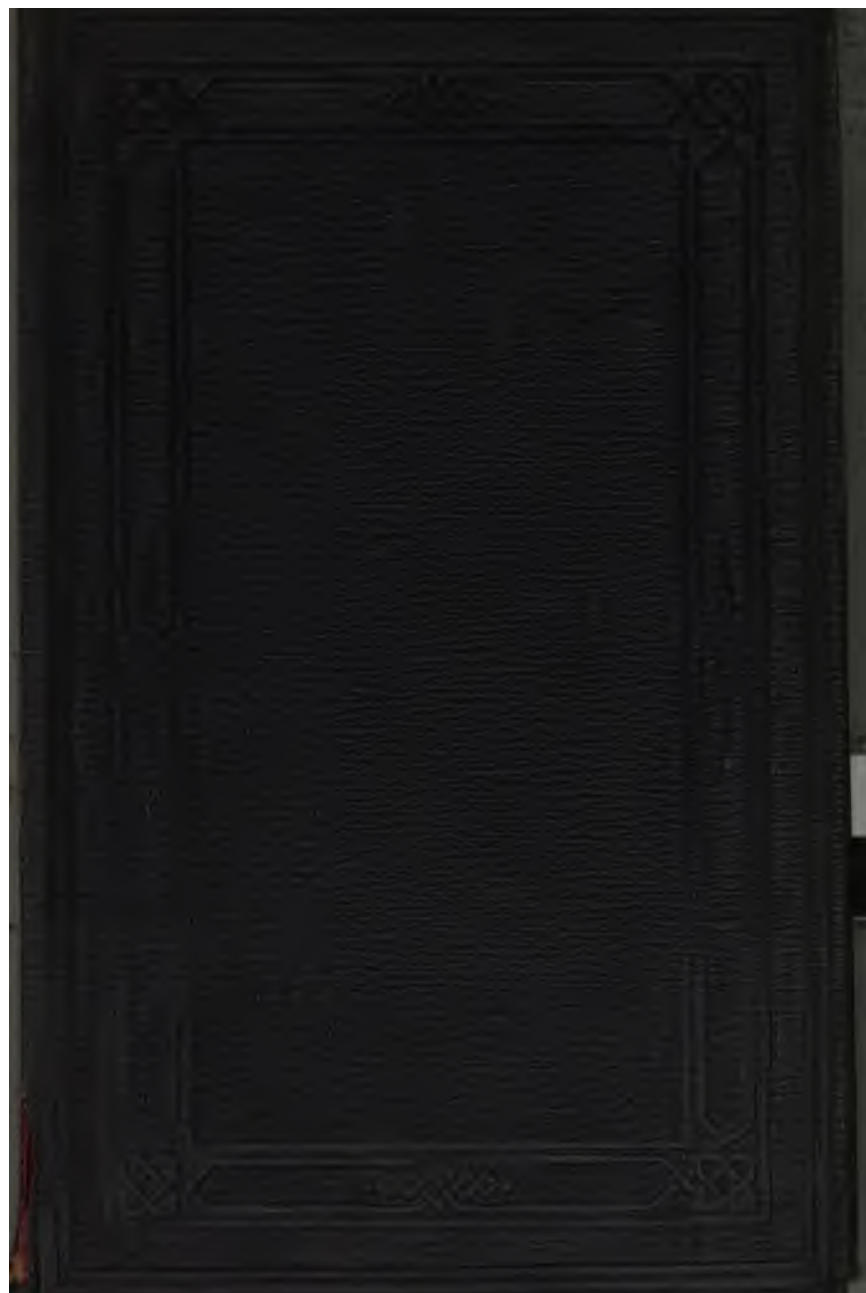
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THE
IRISH LAND QUESTION,
WITH
PRACTICAL PLANS
FOR
AN IMPROVED LAND TENURE,
AND
A NEW LAND SYSTEM.

BY
VINCENT SCULLY, ESQ., Q.C.

DUBLIN:
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“ There have been divers good plots devised, and wise counsels cast already, about the reformation of that realm of Ireland. But they say, it is the fatal destiny of that land, that no purposes whatsoever which are meant for her good, will prosper or take good effect.”—
‘ VIEW OF IRELAND.’—A.D. 1596.

“ Some say, and for the most part every man, that to find a remedy is impossible. For what remedy can be had now, more than has been had unto this time? And there was never remedy found, in these two hundred years, that could prosper; and no medicine can be had now, but such as has been had afore this time; and folk were as wise that time, as they be now; and since they could never find remedy, how should remedy be found by us?”—
STATE PAPER.—A.D. 1515.

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THE IRISH LAND QUESTION.

CHAPTER I.

INTRODUCTION.

It is now felt and acknowledged, by all persons connected with land in Ireland, that there are many evils inherent in its present system of tenure. It is the manifest interest of every Irishman to discover the true causes of those evils, and the proper remedy.

Whoever shall embark upon this discovery, must be prepared to reconsider some preconceived opinions, and to doubt the absolute perfection of some human institutions, which

he has been accustomed to admire. Whilst averse to all unnecessary change, and examining with caution any proposed alteration in the established order of things, he should not reject practical improvements, for the sole reason that he may regard them as novelties hitherto untried.

Those mists of prejudice, whether of education of country or of class, which in a greater or a less degree obscure the judgments of all persons interested in the land of Ireland, render it more difficult to distinguish real grievances from fancied wrongs, or to define the true limit between a just reform and an unjust revolution. The following pages are addressed to those alone, who are prepared to act towards others as they would themselves be dealt with; to make all fair allowances for other classes; and to understand that individual interests can be best promoted by advancing the common good.

Amongst the many concurrent causes whereby Ireland has been reduced to her present unhappy condition, it will be important to discover the source from which have flowed her various evils. Her fertile soil* has always formed her great attraction; and from this natural gift, as from a Pandora's box, have ever sprung her many misfortunes. To a dishonest desire to possess the land, and to an unjust land system, may be directly traced the numerous miseries which have afflicted Ireland for many ages. A tenure, injurious alike to the landlord and the tenant, as well as to the state, is the—*Fons et origo malorum*.

In pursuing the proposed inquiry, it will be necessary to bear in mind that the Land Question, which now occupies the public mind in Ireland, divides itself into two distinct considerations—one Temporary in its character, and the other Permanent.

* See NOTE I.—‘The Land and People of Ireland,’—*post*, p. 200.

In the following pages will be pointed out some of those evils which the present form of tenure inflicts upon the landlord, the tenant, and the state; and other systems will be suggested, as calculated to afford effectual remedies.

The advantages will be mentioned, which may be expected to follow the introduction of a better system.

Some leading matters connected with land will be referred to;—such as, the Free Transfer of land, Free Trade in land, Land Debentures, the laws of Entail and Primogeniture, the question of Compulsory Valuation, and the Irish practice called Tenant Right.

It will also be necessary, to allude shortly to the past history of the country; and to the introduction of Feudal Tenures—a military system, suited only to the subjugation of foreign lands.

CHAPTER II.

THE TEMPORARY LAND QUESTION.

It is quite essential, that the Temporary and the Permanent branches of the Land Question shall be kept separate from each other, in order to avoid any confusion in discussing the general subject.

Before proceeding to consider the permanent evils inherent in the present land system, and the proper remedy, it will be convenient to refer shortly to those temporary difficulties, occasioned by the sudden fall in the annual value of land—either by the visitation of Providence, through repeated failures of the potato crop ; or by acts of the Legislature, through the introduction of free trade in corn and cattle, and an increased taxation.

With regard to these temporary difficulties, it is well worthy of consideration, whether it might not be just to provide a fair mode for affording some relief, in each case of plain injustice, and undoubted hardship. This relief could not be administered otherwise than through the medium of a temporary tribunal, established to investigate all such cases. So far as it may be practicable to define the powers of this tribunal, they should be restricted within specified limits. To some extent, however, its authority must of necessity be arbitrary. *Arbitrium boni viri*. Therefore its constitution should be above all suspicion. It might be entrusted with a temporary power, within just limits, to reduce the charges and outgoings of an estate, in proportion to the sudden fall in its value; and to abate the rent of a tenant, or reduce his arrears, having a due regard to the extent of his permanent improvements, and so as to protect him from being unjustly dealt with.

It may be urged, that such a power to reduce existing charges and outgoings, or to abate existing rents and arrears, would be an unjust interference by the Legislature with the past contracts of private persons. But it is plain that this interference took place, when the value of all land was reduced by those statutes, passed within the last few years, which have diminished the prices of agricultural produce, and at the same time heavily increased the burdens upon land. The true question is, whether it would not be a mere act of consequential justice on the part of the Legislature, to provide some fair mode for counter-acting, in extreme cases, any grievous injustice which has been inflicted by the effect of recent statutes, not contemplated by any of the contracting parties.

In order to illustrate the views thus suggested, for an equitable adjustment of this temporary branch of the present land question, it may be useful to refer to a few familiar

instances, each of which can be adapted to the following state of facts, that have been already made public.*

By a Poor Law valuation, made some eight years since, it appeared that the lands of Mantlehill, situate in the Poor Law Union of Tipperary, and containing 476 Irish acres, were valued at £663 a year, being about 28*s.* per acre. Upon an appeal to the Assistant Barrister of Tipperary, at the quarter sessions held in October, 1850, it appeared that, within the last few years, the public charges upon those lands had been much increased, and that a great fall had taken place in the prices of agricultural produce. It was proved, that the present letting value of the lands did not exceed 10*s.* 3*d.* per acre, even assuming that the public taxation would in future be considerably less than it had been in the previous year, 1849.

* See *Dublin Evening Post*, 5th November, 1850.

The public taxes, actually paid in respect of these lands for the year 1849, had amounted to £395, being about 16*s.* 8*d.* per acre. The county rates alone were 4*s.* 3*d.* per acre. The poor-rates were 10*s.* 9*d.* per acre. Both those rates together, 15*s.* per acre. The poor rates alone were about one guinea to the pound, upon the true letting value. The entire public charges, more than three half guineas to the pound, upon the true value.

The valuation was accordingly reduced to £245; being a reduction in value of £418 a year, or more than sixty per cent. below the former valuation. Although this large reduction, in the letting value of those lands, was partly attributable to repeated failures of the potato crop, and consequent poverty of the country, there is no doubt, it was also in a great measure caused by the operation of recent statutes. Had those statutes not been passed, the lands would probably be still worth at least £500 a year.

Now assume, as one instance, that those lands were set, twenty years since, at £400 a year, to an occupying tenant, who, by the application of his labor and capital, had increased their setting value up to the £663 a year, at which they were rated eight years ago. Notwithstanding all his expenditure and improvements his farm is now worth only £245 a year. It would be still worth £500 a year, but for the effect of recent statutes, not contemplated when his contract was made, and which have suddenly taken away some of the main grounds upon which it was based.

In such a case, is it altogether just that this tenant shall be liable to his full reserved rent of £400 a year, or to be ejected in case of its non-payment?

Or, might it not be more equitable, that as the Legislature has thus disturbed the contract between the tenant and his landlord, by depreciating the value of land, it shall also interpose to make a fair adjustment by means

of a reasonable abatement in the rent, and oblige the landlord to share with his tenant the heavy loss, arising from that large reduction in value caused by the operation of recent statutes?

Again, as another familiar instance, assume, that eight years since, when the lands of Mantlehill were worth £663 a year, their proprietor had died, leaving a widow and children; and having by his will devised those lands to his eldest son, charged with a life annuity of £200 a year for his widow, and with a sum of £2,000 for his younger children; those charges not amounting to one half of the selling value at that period, but being more than the full selling value at the present time.

In such a case, is it quite right, to leave the lands subject to the full amount charged by the will? Thus utterly beggaring the eldest son, through the direct effect of subsequent

acts of Parliament, and thereby defeating the main object of the testator, who could not have contemplated the enactment of those statutes.

Or, might it not, in that case, be more proper that the testator's wishes shall be carried out, through a reduction of the sums charged upon his estate, proportionate to the sudden diminution of its selling value ?

Take also, as a third illustration, the common case of tithe rent-charge.

Throughout every county in Ireland, the existing rent-charges in lieu of tithe composition continue to be based upon the former average prices of wheat, or of oats ; although those prices have been very greatly reduced, through the operation of statutes passed since the several compositions were made. In all cases, the average prices should appear on the face of the statutory certificates, fixing the compulsory compositions. In many instances, the certificates state, that the compositions

were calculated upon the assumption, that the price of wheat was 38*s.* 8½*d.* Irish, or 35*s.* 9*d.* British, per barrel of twenty stone; that sum having been the average price for the seven years preceding the 1st of November, 1821. In consequence of the direct effect of recent statutes, the average price of wheat in Ireland has been permanently reduced, to a price probably not amounting to 20*s.* per barrel.

The tithe rent-charge of the above lands of Mantlehill is £36 18*s.* a year. Were that sum to be now reduced, in the same proportion as 35*s.* 9*d.* bears to 20*s.*, the present tithe rent-charge of those lands would be only £20 12*s.* 10*d.* a year. Or, were the tithe rent-charge of those lands to be now reduced, in the same proportion as the former poor law valuation of £663 a year bears to the reduced valuation of £245 a year, the tithe rent-charge of those lands would be £13 12*s.* 9*d.* instead of £36 18*s.* a year.

Is it just, that those compulsory tithe rent-charges, established by statute law, shall con-

tinue to be estimated and paid according to the high standard of prices which subsequent statutes have so greatly reduced ?

Or, would it not be more reasonable, to reduce tithe rent-charges in Ireland in a like proportion, treating them as mere corn rents?

In England and Wales the tithe rent-charge is a corn rent, in the strictest sense of the term. Throughout all parishes in England and Wales the variation of the tithe rent-charge takes place annually, by means of a simple inexpensive process ; which is certain, universal, and self-operative, and is regulated according to the average prices of wheat, barley, and oats, as ascertained by public advertisement.*

But in Ireland the tithe rent-charge can be varied, only by adopting a most technical course of expensive, uncertain, and isolated proceedings ; to be instituted by the persons

* 6 & 7 Will. IV., c. 71, s. 67.

whose lands are subject to tithe rent-charge, in order to reduce it as to their own particular parishes or lands; and those proceedings must be taken at one particular quarter sessions, between the months of May and November in each seventh year, with the risk of having to pay heavy costs, in case of defeat upon any informality, and of being then debarred from renewing the proceedings for another period of seven years. Owing to the complicated nature of those statutes,* which regulate the mode of varying Irish tithe rent-charges, it is often a most difficult matter to determine the particular seventh year in which proceedings should be instituted.

The result is, that this mode of varying tithe rent-charge in Ireland, has hitherto remained almost a dead letter. In an elaborate treatise upon Irish tithe rent-charge the author states, that he had heard of only one case in which the composition was varied, and

* 4 Geo. IV., c. 99, s. 43; 5 Geo. IV., c. 63, s. 23; 2 & 3 Will. IV., c. 119, s. 6; 1 & 2 Vict., c. 109, s. 32.

that in another case an application to vary it had failed through some informality.*

Upon this subject it may be further remarked, that the act providing a simple mode for the annual variation of tithe rent-charge in England and Wales, was passed some years after those statutes which provided a complicated mode for varying tithe compositions in Ireland, and in the year previous to the statute† by which those Irish tithe compositions were converted into tithe rent-charges. It thus appears, that although the Irish system of varying tithe compositions was deliberately rejected from the subsequent legislation for England and Wales, the improved system for varying tithe rent-charge in England and Wales was as deliberately excluded from the subsequent legislation for Ireland.

It would be easy to place in a much stronger light, the injustice of leaving Ireland subject to

* O'Leary on Tithe Rent-Charge, p. 123.

† 1 & 2 Vict., c. 109.

inferior legislation in this particular matter; but it is conceived that enough has been stated, to suggest the propriety of providing a more attainable mode for varying Irish tithe rent-charge, in proportion to the fall in prices caused by recent statutes.*

A variety of opinions may exist, as to the most proper mode of dealing with these temporary difficulties, and different conclusions may perhaps be deduced from the foregoing statements.

It may also be objected, that however fair it would be to re-adjust the rent and charges, in cases of extreme and evident hardship, it might be difficult to determine the proper reduction to be made in each instance.

It is always a difficult matter to do exact justice. But this excuse can never form a sufficient reason for leaving the plain wrong wholly unredressed, whilst even a partial remedy may be administered.

* See NOTE II.—‘Irish Tithe Rent-Charge,’—*post*, p. 208.

CHAPTER III.

THE PERMANENT LAND QUESTION.

HAVING alluded shortly to those temporary difficulties, which are consequent upon recent changes in Ireland, the question as to the best mode of regulating the permanent tenure of land, remains for a more full consideration.

That question has ever been, in all countries and in all ages, the most important, as well as the most difficult of solution. It has been too often decided by the sword, through foreign conquest or domestic confiscation. Sometimes it has been determined by a popular revolution. At other times by partial and unjust legislation.

In all such cases the effect is the same. Either by force or fraud, one class of persons acquires the land through the plunder of another. The law of the stronger prevails, and is upheld as just by those who profit from it.

“ *Quam facile in nosmet legem sancimus iniquam.* ”

Seldom indeed has this Gordian knot been fairly solved, by an even-handed legislation—defrauding no one, doing violence to none.

The difficulties of dealing with the land question are much increased, by a variety of conflicting interests and passions. In every country an intense desire to possess the land exists in the bosoms of all classes. Its ownership is usually guarded by complicated laws, whose administration is involved in so much obscurity and expense as to interfere greatly with all legal transfers of land, and thus in effect materially diminish its intrinsic value.

To no part of the world do these observations more truly apply than to the land of

Ireland ; which has for many centuries undergone confiscation after confiscation, under various forms and pretexts.

In the twelfth century, the form of confiscation consisted in a grant* of Ireland, from the Saxon Pope, Adrian IV. (Breakspear), to the Norman King of England, Henry II. ; in like manner as, in the preceding century, a similar title,† to the kingdom of England, had been conferred upon William the Conqueror by Pope Alexander II.

The pretext for enforcing this form of confiscation was, that the indigenous occupiers of Ireland were all 'Irish Enemies,' who did not sufficiently acknowledge some spiritual dues claimed on the part of an English Pope, nor admit any temporal sovereignty in the King of England.

In subsequent times, many of the Anglo-Norman settlers were dispossessed of their

* Rymer's *Fœdera*, vol. i., p. 15.

† Thierry's *History of the Norman Conquest*, Book iii.

acquired properties, under the pretence that they had become 'degenerate English'— 'more Irish than the Irish themselves,' and therefore fit to be treated as 'Irish Enemies.' In still later times those former distinctions were disregarded, and the new owners were again extruded, under the designation of 'Popish Recusants,' or 'Irish Rebels;' either because they refused to reject the spiritual supremacy of his Holiness the Pope, or because, during the troubles which ended in the dethronements of Charles I. and James II., they had too faithfully supported the temporal sovereignty of those Kings of England.

An historical knowledge of those confiscations, and of their present effects upon the ownerships and tenancies of land in this country, would assist materially in demonstrating some of the evils connected with the existing land system, and the necessity for a total change, in order to establish any new tenure which will be permanent and

secure. It has, however, been thought more advisable, to abstain from introducing here any detailed statement of those former confiscations, or of their modern effects, though intimately connected with the present subject.*

For the present, therefore, it may suffice to mention, that the result of those various confiscations was, to vest the ownership of large tracts of Irish land in a small number of new proprietors, wholly unequal to its due cultivation, and by whom the indigenous inhabitants were either expelled, or were retained as mere tillers of the soil. This circumstance is stated in order to explain how it came to pass, that throughout the greater portion of Ireland, the occupiers of the land were a distinct people from those to whom its ownership belonged. There existed no original sympathies between the two races; and they were afterwards kept asunder to their mutual injury, instead of

* See NOTE III.—‘Confiscations in Ireland,’—*post*, p. 215.

being allowed to amalgamate for their common good.

The consequence of this policy has been, to introduce between the owner and the occupier of land in Ireland a relationship of hostile dependency, similar to that which had existed after the Norman conquest in England; where the Norman lords suffered their Saxon villeins to remain upon the soil as tenants-at-will, until a mere permissive occupancy for many generations became converted into the customary tenure called copyhold. This English custom will be noticed hereafter, in connexion with the Irish practice called Tenant Right.*

In Ireland, however, the permissive occupation of the ancient inhabitants has not been changed by any legalized custom into a permanent right. For some centuries past, and up to the present time, the great mass of those who till the Irish soil have possessed

* See Chapter xvi.,—*post*, p. 132.

no permanent interest in its improvement; being mere yearly tenants, liable to be dispossessed at any time upon receiving a short notice, and therefore in a state of the most absolute dependence upon their landlords. And the great misfortune arising from the existing state of the law is, that it holds out no sufficient encouragements, to induce either the landlord or the tenant to unite in converting this uncertain yearly tenancy into a certain and permanent tenure, but, on the contrary, creates some serious embarrassments impeding such a conversion.

Having alluded to the former confiscations of Ireland, it may be proper to add, that some of its present proprietors and occupying tenants are impressed with the strong conviction, that a peaceful confiscation of a large portion of the country, and destruction of its people, are now in progress of being made, through the combined agencies of some recent

Acts of the Legislature; such as, the Irish Poor Law system, the statutes depreciating the value of land, and the Irish Incumbered Estates Act. This last Act is looked upon as calculated to create a sudden and extensive glut in the Irish land market, at a period when each depreciating cause is in its most full operation.

There are many, however, who regard those statutes as necessary for the future well-being of the empire, whilst admitting the individual hardships inflicted. The professed objects of those Acts were, to relieve the destitute poor of Ireland, to establish free trade in the produce of the soil, and to liberate a large portion of the land from some of those legal fetters which had impeded its free transfer.

There is no person who can truly deny, that however imperative the necessity which may have existed for enacting those modern statutes, they are in fact contributing largely to the sudden ruin or impoverishment of

many classes of persons in Ireland ; nor any person who can justly refuse to aid, in advancing all fair measures which may tend to break the heavy fall of those recent enactments, to mitigate some of their most cruel consequences to individuals, and at the same time to benefit the State, by carrying out the principle of free trade in land to its full extent.

This is not the proper place to discuss whether those principles of free trade, already acted upon as to some articles of produce, so as to depreciate the value of land, should in justice to persons interested in the land be carried out for their benefit, with respect to other articles of produce,—such as, tobacco, beetroot sugar, hops, malt, and spirits—by abolishing the laws which have either rendered those articles liable to heavy home duties, or have wholly prohibited their production in Ireland.

Neither is this the place to dilate upon the injury done to the Irish producer, by the recent statute* which repealed the Navigation Laws, so far as they affected the produce of foreign countries; but through an amendment, deliberately introduced into the Bill whilst passing through Parliament, retained those laws with respect to the coasting trade of the United Kingdom, which trade so materially affects the produce of Ireland: the plain result of this unjust change in the Bill being, that the foreigner is now at full liberty to import all his foreign produce into any part of the United Kingdom, at the lowest rate of freightage, in a cheap foreign vessel; whereas the Irish producer must pay a high rate of freightage, in consequence of being compelled by law to employ a dear British ship.†

* 12 & 13 Vict., c. 29.

† See NOTE IV.—‘Legislation towards Ireland,’—*post*, p. 226.

These matters are alluded to, because they affect the free use and the value of all land in Ireland, and are therefore connected with the present land question.

In the following pages, it is intended to consider only those direct evils, arising from the present system of tenure, which tend to depreciate the value of land, both to the Owner and to the occupying Tenant, as well as to the State; and also to suggest, as briefly as may be consistent with clearness, an improved system of tenure or estate, combined with certain fair privileges, whereby it is conceived that the value of the land can be greatly increased, to the manifest advantage of those three parties.

CHAPTER IV.

EVILS OF THE PRESENT LAND TENURE.

It is plain that the landlord and the tenant both suffer, in various ways, through the necessary operation of the present system of land tenure in Ireland.

The tenant possesses no sufficient security for the repayment of any labor or capital, which he may expend on the improvement of his farm.

He can seldom find a safe and permanent investment, for any surplus money which he may by his industry acquire. He is therefore led to dissipate it in various ways ; either by placing it upon some unsafe investments amongst his neighbours, or by purchasing insecure interests in other farms. Rarely

indeed is he able to invest it in the most legitimate manner, by acquiring a permanent interest in his own farm.

The consequence is, that the land is seldom improved, and is often deteriorated in its value. The tenant becomes unable to meet his original rent; and is either ejected at once, or is suffered to linger on at a reduced rate. Finally, he finds himself unable to pay any rent, the ruined occupant of an exhausted farm, which he is forced to give up to his landlord, with whom it may remain many years in a state worse than worthless, not producing a return sufficient to enable him to meet even the mere public charges.

The landlord and the tenant also suffer, through the continual state of irritation and warfare, which the present system of tenure is calculated to engender and perpetuate between those two classes, whose natural interests and affections should always be identified.

It is difficult to conceive any just law, which can injure the one class without also injuring the other ; or which can benefit the one without benefiting the other. This view has hitherto been too often disregarded by the law-makers for Ireland. Accordingly, in former times, many statutes were enacted, with the sole object of favoring the landlord ; and some recent acts have also been passed, for the sole purpose of protecting the tenant ; but the combined effect of all such class legislation has been, to disturb the natural relations between the two classes, and to inflict injury upon each.

All landlords know the legal delays and uncertainties attendant upon ejectment or distress for rent, and the heavy expenses of these proceedings. Such expenses, whilst injuring the landlord, have often contributed to ruin a struggling tenant, who might have succeeded in redeeming his farm and recovering his lost

ground, had his landlord been able to enforce his just rights by some inexpensive process.

The numerous Acts of Parliament, relating to the law of landlord and tenant in Ireland, constitute a farrago of legislation, almost unintelligible to those parties, whose mutual rights and duties these statutes have greatly complicated, whilst professing to regulate and define them. Any system of land tenure, which would simplify those rights and duties, and enable each party to enforce them against the other, in a cheap, just, and expeditious manner, would confer some undoubted benefits upon both.

Although the landlord and the tenant are injured in various ways, it is also clear that another great sufferer is the empire at large.

Lands remain desolate, or imperfectly cultivated. Natural resources continue undeveloped. Landowners become impoverished,

and unable to contribute to the wealth, or sustain the burdens, of the state.* Tenant-farmers vanish, and when their bone and sinew shall be required, they may be found arrayed amongst the hostile citizens of rival states.

As a great authority has wisely observed ; —“ The lands used in tillage are laid down to pasture ;† from which six main inconveniences do daily increase :

“ 1. Idleness, which is the ground and beginning of all mischiefs.

“ 2. Depopulation, and decay of towns.

“ 3. Husbandry, which is one of the greatest commodities of the realm, is decayed.

“ 4. Churches are destroyed, and the service of God is neglected.

“ 5. Injury and wrong are done to God’s ministers.

* See NOTE V.—‘Rich Commons, a Rich King,’—*post*, p. 233.

† See NOTE VI.—‘Large Pasture Farms,’—*post*, p. 235.

“ 6. The defence of the land against foreign enemies is enfeebled and impaired; the bodies of husbandmen being more strong, and able, and patient of cold, heat, and hunger, than any other.”*

It would be superfluous to extend the catalogue of evils, which all parties interested in the land of Ireland continue to endure, through its existing system of tenure.

* Co. Litt., 85, b.

CHAPTER V.

REASONS FOR AN IMPROVED LAND TENURE.

ALTHOUGH the present bad system of land tenure, is but one of those various causes which have conspired to impoverish the landlord, ruin the tenant, and reduce the entire landed interest of Ireland to its present depressed state, there can be little doubt that a better tenure, or estate in the land, would tend materially to diminish the evils which now exist, and to prevent their recurrence.

Many eminent writers have concurred in condemning the present land system, and in pointing out some of its leading defects ; but no definite plan for effecting a proper reform has hitherto been proposed, in a practical and attainable shape.

It is in vain to anticipate that important im-

provements would result, from partial amendments in a few of those numerous laws upon which a bad land system is based ; or that the great evils inherent in the present tenures, can be effectually removed otherwise than by means of a thorough reform of those tenures, or by their total abolition, and the substitution of a different land system.

Rejecting therefore all minor emendations of the existing laws, it becomes necessary to consider the proper plan for remodelling the present land system, to an extent sufficient to free it from its most serious evils. This object may be accomplished, through the adoption of either of two plans.

The one plan would be engrafted upon the present tenures, which it would alter in some material respects ; but so as to retain, in a modified form, the relationship of landlord and tenant, the settlements of landed property, and the deduction of titles through a public registry office, or by private muniments.

The other plan would involve the creation of a more simple land system, rejecting the feudal tenures, and all artificial fetters upon a free transfer of the land.

But any plan for an effectual reform should facilitate the transfer of land, and should encourage the creation, with the consent of the owner, and by voluntary arrangement between landlord and tenant, of a simple description of tenure or estate ; which, without any injury or coercion towards the owner, will secure to each occupier a permanent interest in his holding, and eventually identify the actual occupation with the absolute ownership of the soil.

The state, the owner of the land, and the occupying tenant, should each be a party to any voluntary arrangement, by which all would be benefited alike.

Any new system should be as simple as may be consistent with its possessing such peculiar advantages, as will effectually induce its speedy adoption, and tend to carry

out its leading objects, of uniting the ownership with the occupation of the land, and of increasing its value by facilitating its future transfer.

To effect these objects, the state should enforce and continue, as appurtenant to the land, the several incidents to become attached to it by the voluntary adoption of the improved tenure. For this purpose, it will be necessary that a Land Tribunal shall be constituted ; in order to represent in each case the interest of the state, in sanctioning an adoption of the improved tenure, as well as in superintending its original creation and future continuance.

It may now be convenient, to proceed at once to give the concise outline of a plan, for engrafting upon the present tenure of land in Ireland a better system, to be called the 'Improved Land Tenure ;' showing the mode of its creation, its intended privileges and advantages, and the machinery by which it may be constituted and continued.

CHAPTER VI.

MODE OF CREATING THE IMPROVED LAND TENURE.

THE following mode is suggested, for bringing land under the operation of the Improved Land Tenure.

1. Whenever the owner of any land and his occupying tenant, or the owner alone if he be also the occupier, shall wish to have the land brought under the operation of the Improved Land Tenure, let such desire be expressed to the Land Tribunal, by a written proposal in a prescribed form.

2. Having received the proposal, and been satisfied that the persons presenting it are *prima facie* owner and occupier of the parti-

cular land, let the Land Tribunal proceed to have an accurate map prepared, and to ascertain by a proper valuation the fair letting value, or the net annual rent which a solvent tenant can afford to pay above all rates, taxes, and public charges, including the entire poor rates, the county rates, quit rent, and tithe rent-charge.

3. Should the persons or person entitled, as owner and occupying tenant, or as owner in occupation, agree that the fair letting value shall be fixed at a sum not exceeding this judicial valuation, let a more strict examination of the title be made; and having completed it, let the Land Tribunal deposit in the registry office their map of the land, with a judicial declaration in a prescribed form, stating its fair letting value, the names of the owner and occupying tenant, and the nature of their respective interests; and let any lease of the land and necessary evidences of the title, be also deposited in the registry office.

4. Let the effect of such deposits be, to bring the particular land under the operation of the Improved Land Tenure, to be for ever afterwards held according to that tenure, with its several new incidents.

It will be quite essential, that all parties, who may desire to obtain the valuable privileges to be annexed to the Improved Land Tenure, shall in each case consent to adopt the valuation rent fixed by a public tribunal; which alone can guard against the evils of rackrents, and against an abuse of the power to raise limited sums by means of Land Debentures. These Debentures will be fully explained in a future chapter.*

* See Chapter xii.—*post*, p. 79.

CHAPTER VII.

PROPOSED STATUTORY PRIVILEGES.

THE following are some fair privileges, which should be annexed to the Improved Land Tenure; for the purpose of inducing each owner and occupier, to agree to its voluntary and speedy adoption throughout Ireland.

1. In case the rent agreed upon shall not have been lodged in bank, to the credit of the Land Tribunal, on or before the gale day fixed for its payment, let the landlord be entitled to obtain a certificate of its non-payment, and to resume immediate possession of the land; but with liberty for the tenant, within six months, either to redeem his interest upon paying up the rent, with all expenses and costs, or to sell his interest to any third party.

2. Let the landlord have a summary power to prevent the tenant from subletting the farm, or from committing any waste, or from running it out or injuring it in any way, or from breaking any fair and reasonable agreements in his lease.

3. Let the landlord or owner be privileged to raise money upon the security of land debentures, in the most simple and convenient form, to an extent not exceeding ten years' purchase of the fixed rent ; the amount so borrowed to be lodged to the credit of the Land Tribunal, and to be applied, either for the landlord's own purposes, or in payment of any charges affecting the land.

4. Let the tenant have a perpetual interest, so long as he may continue to pay the rent agreed upon, and fixed at its fair letting value.

5. Let the tenant have the power, at any time, to fine down his rent, at a specified rate, such as four per cent., or twenty-five years' purchase ; by paying from time to time any

sum of money, not being less than one year's rent, or by lodging the amount in bank to the credit of the Land Tribunal.

6. Let a tenant, who may have paid one moiety of the sum required to purchase the absolute ownership, be entitled to raise the remaining moiety, either from private persons, upon the security of land debentures in the most simple and convenient form, or by an advance of public money, to be repaid with a low rate of interest by fixed yearly instalments; as in the case of Government advances made for drainage or for poor law purposes.

The following are some additional privileges, which might be usefully annexed to the Improved Land Tenure, although not essential to its constitution.

7. Upon the joint application of both landlord and tenant, let them be entitled to borrow a limited amount of money from Government, for drainage or other permanent improvements, to be secured upon their

joint interests in the land, and to be repaid by the tenant along with his rent, by instalments, with a low rate of interest.

8. Let any owner who may adopt the Improved Land Tenure, be privileged to buy for his own benefit, at a low rate of purchase, any crown rent charged upon the land; also, to purchase, at a fair rate, any tithe rent-charge.

9. It might be justly arranged that, after a fixed number of years, the public taxation, upon any land held under the Improved Land Tenure, should be increased, in proportion to the inferior state of its cultivation, by some law similar to that which is said to exist in the best cultivated districts of China.

10. It might perhaps also be arranged, that any land brought under the Improved Land Tenure, should thenceforth be excepted from the poor law electoral division to which it would otherwise belong, and be subject only to a property rating, with its due proportion of the establishment charges.

CHAPTER VIII.

MACHINERY FOR MAINTAINING THE IMPROVED LAND TENURE.

It will be necessary that an appropriate machinery shall exist, in order to place the Improved Land Tenure upon a proper basis, and to maintain its original simplicity and vigor.

For this purpose a permanent Land Tribunal should be constituted, and its powers defined. These would soon become more important and useful, than those exercised by any other tribunal in the country. The necessity for establishing a Land Tribunal, in connexion with the system of Improved Land Tenure, will be apparent from considering its various duties.

The following is a short outline, of some of the duties of the Land Tribunal.

1. To prepare appropriate forms, and make general rules, in order to regulate the course of proceedings ; those forms and rules to be approved of by the Privy Council, and afterwards laid before Parliament, in a manner similar to the general rules made by the Commissioners, under the Irish Incumbered Estates Act.*

2. To receive and examine each proposal; to have a map made of the land, and ascertain its fair letting value ; to investigate the title, and to require that all documents, which may be necessary for bringing the land under the operation of the Improved Land Tenure, shall be duly lodged in the registry office.

3. To receive and pay over all rents ; to receive and duly apply all sums paid for the

* 12 & 13 Vict., c. 77, ss. 10, 11.

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purpose of fining down any rents; to act summarily in enforcing punctual payment of rents, and in compelling the observance of all fair covenants.

4. To issue land debentures in the proper forms, and to receive and duly apply all payments made on account of the principal or interest.

5. To examine any application of the 'Registered Owner Limited' or 'Registered owner Fiduciary,' or of the 'Registered Tenant Limited' or 'Registered Tenant Fiduciary,'* for the absolute sale of any settled or trust estate; to assent to such absolute sale, in case it shall be shown to be for the benefit of all parties interested in the property; to receive the purchase-money paid for any settled or trust estate; and to provide for the future application or investment of the purchase-money, and of the annual interest

* These terms will be explained in Chapter x., *post*, p. 58; on the Mode of Transfer and Registry.

and profits, according to the legal rights, and so as to protect the interests of all parties.

6. To arrange for having local land-banks or offices established, through which all receipts and payments shall pass, in connexion with any land held under the Improved Land Tenure, on account of the reserved rent, or of the land debentures, or of any purchase-money for the land.

CHAPTER IX.

ADVANTAGES OF THE IMPROVED LAND TENURE.

HAVING submitted an outline of a plan for an Improved Land Tenure, by stating the mode of creation, the statutory privileges, and the machinery by which it may be constituted and maintained, it is proposed to mention shortly some of those numerous advantages, direct or indirect, which its adoption will be calculated to confer, upon all parties interested in the land of Ireland.

The direct advantages which the Improved Land Tenure will confer, upon all those landlords and tenants who shall voluntarily adopt that system, may be thus recapitulated:—

1. The landlord will feel assured, that upon the very gale day on which his rent becomes due, it will be lodged in bank to his credit, free from all expense or trouble, with as much punctuality as the amount of the best mercantile bill of exchange.

2. According as any portion of the rent shall be purchased and fined down by the tenant, the security of the landlord for future payment of the remaining portion will be increased.

3. According as the tenant shall improve his farm, the security of the landlord for payment of his rent will also be increased.

4. The landlord will possess cheap and summary powers, for enforcing immediate payment of his rent, for preventing any acts of waste or injury to his land, and for compelling the observance of all fair covenants contained in the lease.

5. The tenant will have a permanent interest in his holding, subject only to be divested

by his own default in the payment of a moderate rent.

6. The tenant may sell his interest to any third person, or may fine down his rent at a fixed rate of purchase, and for this purpose great facilities will exist; thus entitling him to unite the occupation with the ownership of the soil, and giving him the very best description of tenant-right.

7. The tenant may at any time free himself from all real or fancied oppression on the part of his landlord, either by purchasing off all the rent himself, or by inducing some other person to assist him in making the purchase. This power in the tenant will operate as a salutary check, against all undue annoyances on the part of any landlord.

8. The landlord and the tenant will each possess the power, to dispose of his interest in the land itself, in a free form, and in a simple manner; and will also, by means of the land debentures, be enabled at any mo-

ment to raise a limited sum, at a low rate of interest, without cost or trouble.

9. Land Companies, Land Debenture Companies, Land Investment Companies, Mutual Land Societies, and Land Banks, will soon spring up on all sides; to accomplish a more perfect free trade in land, by facilitating its free transfer, and by supplying means for its more beneficial use, through a full development of that intrinsic capacity which so pre-eminently belongs to the land, of becoming the most valuable and secure medium for the circulation of money.

But besides those direct advantages, there are some indirect benefits, which the landlord and tenant, as well as the state, will necessarily derive from an adoption of the Improved Land Tenure.

10. All occupiers will improve their farms to a high degree of culture. Fertile land will be made more productive; the moor and

the mountain will be reclaimed, and the wilderness cease to be waste.

11. Each occupier will soon realize a sufficient competency, to enable him to maintain his family in comfort and independence. “He that tilleth his land shall have plenty of bread.”

12. The farmer will feel new incentives to economise his means, and to introduce local habits of industry for the full occupation of all members of his household.

13. The burden of poor rates will diminish and disappear, whilst the means of the ratepayer to meet all other local taxation will daily increase.

The poor-houses will be emptied, and their innocent prisoners be released from those Gaols for the Unemployed. It will then no longer be truly said of Ireland :—“All her people sigh ; they seek bread ; they have given all their pleasant things for meat to relieve the soul.”

14. The tide of emigration, which now threatens to depopulate Ireland of her best inhabitants, will cease to flow.

15. The Irishman will have an interest to defend the soil of Ireland against all foreign comers. He will no longer feel as an alien in the land of his birth. The men of Ireland will become the faithful friends and free defenders of the empire, instead of remaining its hereditary helots and natural foes.*

16. As a consequence, the thirty thousand troops which garrison Ireland may be withdrawn.

17. All tenants will be provided with ready and permanent investments for their accumulating capitals.

* "Give them an interest in the Kingdom, and they will use their arms, not to overturn, but to defend it. Upon first principles, it is a miserable Government, which acknowledges itself incapable of retaining men to their obedience, who have arms in their hands; and such a Government is to be found in Ireland alone."—A. Young's *Tour in Ireland*, Vol. II., part ii., p. 52. Dublin Ed. 1780.

18. The evils of absentee ownership will be removed.

19. The surplus capital of the country will become more localized.

20. The laborer will be better employed and paid.

21. More money will be expended amongst the neighbouring farmers and shopkeepers, in procuring the comforts and necessities of life. The co-operative capital of all holders of land will be thereby much increased.

22. The wealth of all classes will be multiplied many fold, and Ireland will become a better customer for the manufactures of Britain.*

23. A large portion of the surplus capital will be employed in the purchase of addi-

* "The wealth of Ireland is the wealth of England; and the consumption in Ireland, of English manufactures, thrives exactly in proportion to that wealth. That kingdom is one of the greatest customers we have upon the globe. Is it good policy to wish that our best customer may be poor? Do not the maxims of commercial life tell us that the richer he is the better?"—A. Young's *Tour in Ireland*, Vol. II., part ii., pp. 166, 178, 215.

tional farms. There will be a more wholesome demand for the ownership of land, which will bear a higher market price.*

24. The systems of the middleman, of the sub-agent, and of rackrents, will disappear.

25. The independence of electors, from undue influence, will be effectually secured.†

In addition to those important advantages necessarily inherent in the Improved Land Tenure, it would be easy to suggest many other benefits which may be expected to follow its introduction.

* See NOTE VII.—‘Small Estates.’—*post*, p. 240.

† By a recent Act (13 & 14 Vict., c. 69) the Elective Franchise in Ireland was conferred upon all occupiers, including mere yearly tenants, who may be rated in Counties at not less than £12, or in Boroughs £8, a year. In the session subsequent to the passing of that measure, the Prime Minister by whom it had been introduced stated in the House of Commons that,—“Looking at the question practically, his experience had convinced him that the English £50 tenants-at-will were much under the influence of the landlords, whereas the poorest freeholders were independent.”—(See Lord John Russell’s speech, made Feb. 21, 1851, on Mr. Locke King’s motion for an extension of the English franchise.)

CHAPTER X.

MODE OF TRANSFER AND REGISTRY.

IN order to obviate any obscurity, consequent upon the compressed form adopted for presenting an outline of the Improved Land Tenure, it will be necessary to enlarge a little on some of its details, and to discuss shortly those important matters, connected with the plan, which are perhaps not perfectly familiar to all general readers. It may also be useful to anticipate some of those objections, which it is not improbable that practical minds will suggest on the part of the Landlord, the Tenant, or the State.

Intimately connected with this subject, and a most vital portion of the general Land Ques-

tion, is the consideration of the best mode for enabling an owner to alienate his interest with the least possible expense or trouble.

Practically speaking, the beneficial property in land is divisible into an ownership of incumbrances charged upon the land, and an ownership of the land itself subject to the charges.

To promote a free transfer of all property in land, it will be necessary to create facilities for transferring not merely the land itself, but also the charges upon it. Such facilities would be much increased by simplifying the nature of all estates, and the form of all incumbrances.

The unlearned landowner can feel the various embarrassments and losses his property is daily exposed to, through those legal forms, from which he may earnestly desire that it shall be released ; but he feels also his

own inability to deal with legal matters, or to extricate his estates from those intricacies in which he has found them involved.

On the other hand, those who have been accustomed to venerate the common law of England as 'no other than pure and tried reason,'* and as 'the absolute perfection of reason,'† are often unconscious of the practical losses inflicted by the preservation of inconvenient systems and forms.

The real property lawyer can fully understand the great imprudence of all rash innovations in ancient institutions: and can admire the beautiful complexity of family settlements

* Plowd. Rep., fol. 316. "The common law—which is no other than pure and tried reason—has appropriated the ore of gold and silver to the King, in whatever land it be found."

† Lord Coke, in his Second Institute (West. 1, c. 12) states, that "the judgment of *peine forte et dure* against a prisoner who stands mute, was at the common law,—which is the absolute perfection of reason."

See NOTE VIII.—'Peine Forte et Dure'—post, p. 249.

with their numerous charges, their intricate limitations, and remote remainders, which he regards as guardian angels against the extravagance of improvident heirs. He does not feel the inconveniences consequent upon these settlements, the litigation to which they give rise, the depreciating effect which they exercise upon the value of landed property, or any of those injuries which they inflict, not only upon honest creditors, but also upon the owners themselves, as well as upon the state.

He considers it highly reasonable, that all land shall continue liable to be strictly tied up, during any life or number of lives in being, and for an additional period of twenty-one years, to commence upon the death of the last surviving life.

He knows all the learned lore about contingent remainders and executory devises; about uses and trusts; and about deductions of title through artificial systems of searches,

either in the public registries or in private repertories.

He is aware that the land may be indefinitely incumbered in various forms, with family charges, mortgages and judgments, recognizances and crown bonds, decrees, orders and rules.

He feels inclined to adopt the easy creed, that 'whatever is,—is right;' and yielding to those educational influences which sway all classes alike, he permits professional prejudice to usurp the throne of truth.

In order to facilitate the transfer of the land, either of two courses may be adopted. The one course would be limited in its operation. It would maintain in a modified form the present system of family settlements, with the consequent systems of land registry and deductions of title. The other course would involve an abolition of those systems, would simplify the property in the land, and effec-

tually remove all undue restraints upon its alienation.

For the present it may suffice to suggest the more limited course, which is also the more congenial to the existing mode of tenure, as well as to its proposed substitute, called the Improved Land Tenure.

It will be highly desirable that when instituting the Improved Land Tenure, it shall be so arranged, that all land held under it can be capable of alienation, notwithstanding any limitations or trusts to which it may be subject. This important object might be effected so as to benefit all parties interested, and at the same time protect the rights of any third persons.

The following is an outline of a mode that might be adopted, for thus facilitating the transfer of land, in connexion with the registry system :—

1. Upon the face of the original registered instrument, bringing any land under the Improved Land Tenure, and of every subsequent registered transfer of the same land, let the Land Tribunal describe the owner of the land, as the 'Registered Owner Absolute,' the 'Registered Owner Limited,' or the 'Registered Owner Fiduciary;' and also describe the occupying tenant as the 'Registered Tenant Absolute,' the 'Registered Tenant Limited,' or the 'Registered Tenant Fiduciary.'

2. Let any person described on the registry as the 'Registered Owner Absolute,' or as the 'Registered Tenant Absolute,' have the absolute power to dispose of his absolute interest in the land or lease, by the most simple form of transfer.

3. Let any person described on the registry as 'Registered Owner Limited,' or 'Registered Owner Fiduciary,' or as 'Registered Tenant Limited,' or 'Registered Tenant

Fiduciary,' also have a power to transfer the land or lease absolutely, with the judicial assent of the Land Tribunal, to be given in those cases only in which they shall have been fully satisfied that the proposed transfer will benefit all parties interested in the property ; but in all such cases the purchase-money shall be duly invested to the joint credit of the owner, or of the tenant, and of an official trustee to be appointed by the Land Tribunal for the purpose of protecting the rights of all remainder-men or *cestui-que-trusts*.

It will be observed, that the power proposed to be given to any Owner or Tenant, Limited or Fiduciary, to transfer the land absolutely, could be exercised only with the judicial assent of the Land Tribunal, and is confined to those cases in which it shall have been shown that all parties interested in the settled estates, or in its trusts, will be benefited by the intended transfer. It is also

provided that, in all such cases, the purchase-money shall be duly invested to the credit of the owner or tenant, and of an official trustee, so as to protect the rights of all third persons.

The principle of such a disposition would simply be, to transfer the settlement from the land to the fund; so that the purchase-money shall thenceforth be subject to all the limitations and trusts, which had previously affected the purchased property.

Besides the public benefits, likely to flow from that increased power to alienate the land, which has been so often said to be according to the more modern genius of the English Constitution, many private advantages would often be derived by those interested in the settled land. For it is familiarly known, that the absence of any legal power to dispose of settled land, and to realize a fund to which the settlement might be transferred, has in numerous instances caused

injury, and sometimes absolute ruin, to those whose interests the settlement was originally framed to protect. In some cases, those consequences have been averted by private acts of Parliament, prepared and passed at a distance from the parties interested in the lands, and attended with such expense, as to be unattainable in ordinary cases.

Those numerous private acts, some of which are passed in each session before a remote and ill-constituted tribunal, will be found to form much stronger precedents than are necessary to support the suggestion, that a local and regular Land Tribunal shall possess a power to transfer the settlement from the land to the fund, and to consent that the settled land shall be disposed of absolutely, for the benefit of all persons interested in the limitations or trusts of the settlement.

Other precedents are furnished by those powers to transfer the settlement from the

land to the fund, which have been already conferred in many cases by the numerous private Railway Acts, by the general Lands Clauses Act,* and by the Irish Incumbered Estates Act.†

It may be objected that it would be inconvenient, and indeed impracticable, to have the purchase-money of a settled estate protected and administered through the intervention of an official trustee.

To this objection it might be answered, that upon the sale of each settled estate, the Land Tribunal could provide for having the fund invested to the credit of private trustees of a proper character, and who would afterwards be responsible for its due administration, in like manner as other trustees of any personal estate. But in truth the non-existence of any official trustees, to undertake the legal ad-

* 8 & 9 Vict., c. 18, ss. 69, 70.

† 12 & 13 Vict., c. 77, s. 30.

ministration of all such trust estates and funds as may be confided to their charge, has long been felt as a public inconvenience, which has frequently inflicted great injury and useless expense upon persons interested in trust property. To supply this defect it has often become necessary to institute expensive suits, for the purpose of having trusts administered through the inconvenient and ruinous agency of the Court of Chancery, and in many cases the trustfunds have thenceforth been managed by that court or its officers, as official trustees.

Those recent statutes* which have enabled all trustees, in England or in Ireland, to relieve themselves from the future administration of any trust funds, by lodging them in bank to the credit of the Accountant-General of the Court of Chancery, amount to distinct legislative recognitions of the public inconvenience arising from the want of any official trustee to administer trust property.

* 10 & 11 Vict., c. 96; and 11 & 12 Vict., c. 68.

CHAPTER XI.

ENTAILS AND PRIMOGENITURE.

MANY persons may deem it desirable, that the Improved Land Tenure shall be free from the laws encouraging Primogeniture and Entails; conceiving that through the effect of those laws, and of the repeated confiscations of Ireland, its land is held by comparatively few proprietors, in much larger masses than are consistent with the well-being of the country, or with its proper cultivation.

Some supporters of the present laws of Entail and Primogeniture assert, that “ The law of Entail, though in name it exists, “ has in substance long been abolished ; and

“ the law of Primogeniture makes little practical difference in the distribution of property.”* Other advocates maintain that those laws exercise a salutary effect, in preventing that minute and infinite subdivision of land, which they conceive would otherwise take place.

Upon the other hand, the numerous writers who have recommended an abolition of those laws insist, that they exercise a most baneful influence upon the country, by contributing materially to accumulate its land into the hands of a few individuals, and by thus preventing its due distribution.

On each side instances are adduced from foreign States, to exhibit the practical results, whether for good or for evil, which are asserted to have arisen from the absence of any laws of Primogeniture or Entail.

* ‘ Sophisms of Free Trade, by a Barrister,’ chap. xi.

Into all the discussions upon this subject it is unnecessary to enter at present. It will suffice to state, that with respect to any Irish land which may be brought under the Improved Land Tenure, it would appear desirable to abolish the present law of Entail, and to modify that of Primogeniture.

The old feudal systems, which discouraged the alienation of land, and maintained the law of Primogeniture,* have been abandoned in modern times throughout most European States.

In France, Switzerland, and the Rhenish Provinces, a division amongst the widow and

* “The right of Primogeniture, first gained footing in England by the introduction of military tenures; it being convenient to the service of the Kingdom to preserve the fee entire, to the intent that the tenant by knight-service, who by his tenure was to attend the King in his wars, might do it with more dignity and grandeur; and the choice fell upon the eldest son, as he was soonest able to perform the duties of the fee.”—*Robinson on Gavelkind*, p. 22.

children is imperative in all cases of successions to land, and the owner does not possess an absolute power to devise it. In other continental countries, the owner may devise his estate absolutely to any person; but if left undisposed of, either the land or its purchase-money will be distributed amongst his widow and children in a prescribed form.

In the United States of America, the English law of Primogeniture was abolished at the Revolution; and, in all cases of intestacy, the land was made divisible amongst the next of kin, in the same manner as personal estate. But the owner can devise his land as he may think fit.

Those English lands, which are still held according to the tenure or custom of gavelkind, may be devised by the owner; but, in case of his intestacy, descend to all his sons alike. A species of gavelkind was formerly the common tenure of land in Ireland, ante-

rior to the Norman Conquests, and the introduction of feudal tenures.*

It is suggested, that the change in this respect best suited to Ireland, and to the land proposed to be held according to the Improved Land Tenure, might be, to permit the absolute owner to devise his estates, as he may do at present; but to arrange that in all

* “The custom of gavelkind is in other places in England, besides Kent, and it is also in North Wales.” Littleton, sect. 265.

“The like custom was in Ireland; for there the lands were of the nature of gavelkind, which is one mark of the ancient Britons:—a wise and warlike nation, who have preserved their language for above 1000 years, and who call us Englishmen *Saisons*—that is, Saxons.” Co. Litt., 175, b.

It would appear that gavelkind was originally universal amongst the Saxons and ancient Britons, as well as in Germany, Italy, France, England, Ireland, Scotland, Jersey, &c.—Robinson on Gavelkind, chap. ii.

In some of those countries, gavelkind was superseded by military tenures and the law of Primogeniture. In France, and other continental countries, where gavelkind had been partially abolished, it has in effect been re-established in recent times.

cases of intestacy they shall go amongst his surviving wife and children, in a certain convenient manner, to be regulated by a statute of distributions applicable to landed property. The statute might provide fixed charges by debenture for the wife and daughters, fairly proportioned to the number of the children, and the ascertained letting value of the land. Subject to those charges, the land might be distributed amongst the sons; and regulations could be introduced, which would have the effect of preventing an inconvenient subdivision of property.

A facility for carrying out any such regulations, would be afforded by the very perfect subdivision of Ireland, into a number of well-defined townlands,—a great national work, supposed to have been perfected more than fifteen hundred years since, and upon which the recent Ordnance survey and all other surveys and divisions of Ireland have been altoge-

ther based. In the case of an intestate owner, dying possessed of only one townland, the Land Tribunal might be authorized, either to permit a subdivision into farms of moderate size, or to have it sold at once, and to distribute the proceeds amongst the widow and children. In other cases, where there would be several townlands, the Land Tribunal might be at liberty to sell one or more, in order to pay the charges of the wife and daughters, and could then distribute the remaining townlands amongst the sons, giving to each of them one or more townlands; and in case of an inequality in value, charging the larger townland with a sum of money by way of equality of partition.

Should it be deemed desirable to give an advantage to the eldest son as future head of the family, it might be arranged that in each case of intestacy he shall take a double share; or that he shall be allowed to select the first share upon any division of the townlands.

This mode of arrangement would tend to create a sufficient distribution of the land in Ireland, without causing that inconvenient or infinite subdivision which some persons suppose to exist in France and other countries. It would also facilitate the future transfer of the land, and preserve the simplicity of its registry, that as a general rule each farm shall be confined within the limits of one townland, and shall not be made up of distinct portions of different townlands.

There are in Ireland over 60,000 townlands, which vary much in extent and value, but the average area is rather more than 300 English acres. It may be assumed that each townland will in general constitute a large farm, affording an ample field for the profitable investment of labor and capital. The occupying owners of such farms, improved to the fullest extent, would contribute greatly to augment the material wealth of the country.

It may be right to state, that it is not intended to suggest that it shall be imperative upon the Land Tribunal, to make the farms held under the Improved Land Tenure co-terminous with the townland divisions of Ireland, but merely to encourage the adoption of those established divisions as convenient to be retained with respect to many of its farms. According as the country shall increase in wealth, it will become right to permit a more free division of each large townland into a number of smaller farms.

CHAPTER XII.

LAND DEBENTURES.

HAVING suggested a mode for facilitating the alienation of that portion of the beneficial property in the land, which consists of an ownership of the land itself subject to the incumbrances charged upon it, the most proper mode for facilitating the transfer of those incumbrances, is the next matter for consideration, in connexion with the plan which has been submitted for creating an Improved Land Tenure.

In order to simplify the transfer of incumbrances upon land, the best course will be to impart to future charges those qualities of

simplicity, uniformity, and negotiability, which are so repugnant to each of the existing forms by which sums of money may now be charged upon landed property.

These beneficial qualities would exist in their most perfect degree, in a convenient description of Land Debenture.

One of the most valuable privileges proposed to be annexed to the Improved Land Tenure, is the power to borrow a limited amount of money upon that class of security. The exercise of this privilege would involve little more than the modification of a technical rule of law, which prevents a Land Debenture, or charge upon land, from being transferable and negotiable, like an ordinary bill of exchange.

The abolition of those artificial restrictions, which now unduly impede the natural free trade and free dealing in land, would greatly increase its intrinsic value. There can be no just cause for unfairly refusing to establish,

for the benefit of the land, those principles of free trade which have been already introduced to an extent calculated to diminish its value. If it be right to allow the untaxed owner of foreign produce to sell it here to the best advantage, it cannot be wrong to permit the taxed owner or tenant of Irish land to dispose of it in the most advantageous form in his own home market.

One of the chief objections, usually felt to the investment of money in the purchase of land is, that capital so invested becomes permanently locked up, and its utility thereby diminished. This objection would be obviated, and the value of all land be greatly increased to its owner, if he could use it, at any time, as a sort of circulating medium, by possessing a limited power to charge it with negotiable Land Debentures. He might thereby from time to time, without expense or delay, raise sums of money to pay his debts, to give por-

tions to his children, to improve and stock his farms, and to meet his current engagements.

The proposed Land Debenture, would possess more advantages than now belong either to the best mercantile bill of exchange, or to the most secure mortgage. It would combine the negotiability of the one, with the stability of the other. It would arouse the capital which lies dormant in the land, and infuse an active vitality into inert matter.

These Debentures would be eagerly sought after by bankers and capitalists, as secure investments for their unemployed funds. The landowner could therefore always obtain a temporary loan at the very lowest rate of interest, and without any extra costs or delay; instead of the high rate of interest, heavy expenses, and tedious delays, to which he must now submit, as the invariable accompaniments of all land loans.

The only expenses attendant upon these

Land Debentures would be some trifling office charges for their preparation, and also some small stamp duties, which, from their frequency, would produce a considerable revenue to the state. This species of revenue would resemble the Post-office charges. It would be another description of public taxation, cheerfully paid for value received.

There will of course always exist those stationary characters, who may retain as their perpetual motto,—*Stare super antiquas vias*; and who may sincerely entertain grave apprehensions of any innovations in the ancient laws, however well considered or beneficial the change, and however required to meet the alterations which have taken place in other matters.

There will also, no doubt, be found some financiers, who may suppose that the proposed Land Debentures might interfere with Exchequer Bills and Navy Debentures, or even

with Bank Notes, and with the current coin of the realm ; not remembering that those securities constitute but a small proportion of the circulating medium of the empire ; which medium is composed chiefly of mercantile bills, bankers' cheques, and money of account ; nor bearing in mind that any great benefit bestowed upon the landowners of the country, must necessarily increase the general wealth of the state.

Some capitalists and mercantile men also may imagine, that the existence of Land Debentures would diminish their profits, by interfering with the securities in which they now deal. They should however consider, whether those Land Debentures would not open to them another field for the investment of their capital, with additional sources of profit ; and also whether there will not always be some classes of capitalists, such as mortgagees and trustees, to whom the Land Debentures would be well suited, but who could

not invest their funds in bills of exchange or in mercantile securities of any sort. But of all others, the mercantile class, who have always enjoyed the valuable privileges of employing all their capital and credit in the most beneficial form, through the medium of stamped bills of exchange, and of unstamped cheques and money of account, are the least entitled, and probably the least disposed, to raise any objection against extending to the landowner a similar privilege, to make the most profitable use of his property in the shape of stamped Debentures charged upon his land.

It should however suffice to state, that no class interests or jealousies ought to prevent a bare act of justice from being done to the landowner, by permitting him to use his own property in the manner most advantageous to himself, and most consistent with those doctrines of free trade which have been recently established and acted upon to his disadvan-

tage. Assuming then that these doctrines will continue to prevail, and will be carried out to their fullest extent, in favor of the article of land, as well as against that commodity, it may be useful to state the nature of the Land Debentures, which can be created in connexion with the Improved Land Tenure, for the purpose of inducing its general adoption by imparting a valuable privilege to the land.

In the case of a Registered Owner Absolute, the following would be a convenient form of Land Debenture.

1. When any land shall have been brought by the absolute owner under the New Land Tenure, let the Land Tribunal be at liberty to issue Land Debentures, upon the security of such land, to an extent not exceeding ten times the amount of its fixed annual value.

2. Let the Debentures be as uniform as possible, and according to a prescribed form, to be prepared by the Land Tribunal.

3. Let the Debentures be made payable to

the Land Tribunal or to their transferee, and let such transferee be at liberty to transfer them by simple delivery to third persons.

4. Let each holder of a Debenture be at liberty to transfer it, either with or without the collateral security of his own personal liability for its future payment.

5. Let each Debenture, upon its original creation, be entered in the Registry Office as a charge upon the particular land.

6. When a Debenture shall have been paid off, let it be delivered up to the Land Tribunal to be by them marked 'Paid and cancelled,' and forthwith transmitted to the Registry Office, in order that it may be preserved there in its cancelled state, and that a short entry of satisfaction may be made by the Registrar.

For the convenience of reference a Debenture Book may be kept at the Registry Office, to enter the creation and satisfaction of each Land Debenture; but it would occasion use-

less trouble and expense, and interfere greatly with the negotiable nature and value of a Debenture, to require that any of its intermediate transfers or endorsements shall be noticed on the Registry.

7. Let each payment, in respect of the interest or of the principal of any Debenture, be lodged in bank to the credit of the Land Tribunal, and be then transferred to the credit of the person entitled to receive such payment.

The payments proposed to be made through the Land Tribunal, might be transacted similarly to the payment of dividends of Government Stock, and be as simple operations.

8. In any case, where the interest or the principal of any Debenture shall remain unpaid for a period of three months after the day fixed for payment, let the holder of that Debenture have power to require either immediate payment, or a summary sale of the land to discharge the sum due.

9. Let such sale be made by the Land Tribunal, in a cheap, simple, and expeditious form, after due notice to the parties interested; and be perfected by a registered transfer to the purchaser from the Land Tribunal.

Similar Debentures might be issued, to be charged upon the estates of a Registered Owner Limited, or Registered Owner Fiduciary; but, in either of those cases, the amount should not exceed the incumbrances already charged upon the inheritance of the land, and should be applied by the Land Tribunal in payment of those incumbrances.

The Tenant's Debentures would in substance be the same as the Owner's Debentures, and would be issued only for the purpose of enabling a tenant to complete his purchase of the ownership of his farm. It would therefore be right that a Tenant's Debentures should be equal to one half of his

purchase-money, which, at twenty-five years' purchase, would amount to twelve and a half times the fixed letting value. The sums raised by means of any Tenant's Debentures, should be applied, in the first instance, by the Land Tribunal, in paying off any outstanding Owner's Debentures, which may happen to be charged upon the same land.

It would be most convenient that these Land Debentures shall be not only the first, but also the only charges upon any land brought under the Improved Tenure; and that neither the owner nor the tenant shall be at liberty to encumber it with any other description of charge, by way of mortgage, judgment, or otherwise. Should it become necessary to raise a larger amount, than that permitted to be charged by means of Land Debentures, any further sums should be obtained by an absolute sale of the whole, or of a sufficient portion, of the land.

In creating the Land Debenture system, it will be important to attend to the form and character of the Debenture: for the value of a Debenture, and the power to raise money upon it, at a low rate of interest, will mainly depend on its capacity to be transferred and realized, at any time, in an efficient and inexpensive manner. A clumsy description of Land Debenture, loaded with heavy stamp duty, and incapable of being transferred or realized without expense and delay, would be little better than the existing modes of mortgaging or charging the land, which have become almost exploded as prudent investments for money.

It is familiarly known to all bankers, that a much higher profit may be derived from discounting at a low rate a convenient class of mercantile bills, than from discounting at higher rates other classes of bills, however well secured. In the one case, the bill, from its convenient and current character, will be

profitably passed at once. In the other, it may not be negotiable without loss, and must therefore remain on hands until its maturity. For this reason alone, it is easy and inexpensive to raise money, at any moment, at a low rate of interest, upon a first-class mercantile bill payable in London ; whereas it is difficult, dilatory, and expensive, to obtain an advance upon the best secured mortgage.

It will have been observed, that the proposed system of Land Debenture does not involve the advance of any public money, either to the owner or to the tenant. If proper and effectual facilities were afforded for obtaining advances, through the circulating medium of an eligible description of land stock, consisting of convenient Land Debentures, it is conceived that, after a short experience of the system, abundant funds would be forthcoming from private persons or from public companies, and that all pecuniary aid from Government might be dispensed with.

It may, however, be well to consider, whether it would not be useful to continue for a time, to land held under the Improved Land Tenure, advances similar to those which are now in the progress of being made for the encouragement of drainage, or other improvements of a permanent character.

It might also be just and politic, in the present impoverished condition of Ireland, to facilitate the tenant in purchasing the ownership of his farm; by supplying him with a limited advance of public money, to enable him to complete his purchase. The repayment of all these advances, with interest, would be well secured, by a terminable annuity in the nature of a moderate rent, the security for which would be increasing from year to year. There have been many recent statutes, under which public money has been advanced, either upon the security of future county rates, or poor rates, or of terminable annuities charged upon particular lands.

It might be deemed invidious to recount the historical reasons, which would appear to give to the tenants of Ireland peculiar claims to public aid, to enable them to acquire the ownership of their farms; through a fair purchase for the full value, and without forcing any landlord to submit to a sale of his interest, who may not have considered it for his benefit to adopt voluntarily the improved system of Land Tenure, with its several incidents. It is however conceived, that, upon public grounds alone, and as a matter of mere state policy, it may be thought most desirable, to encourage the occupying tenant to unite in himself the ownership of the soil; and, with such object, that some temporary loan of public money shall be made, as an exception to any political rule which may be adverse to that class of advances.

It would be easy to instance numerous statutes, which have at various times authorized loans of public money to private parties,

possessing claims for temporary aid from the public purse far inferior to those of the occupying tenants of Ireland. In many of those instances, the security for the public loan was much less safe than that of a terminable annuity, payable by an occupier, who has already paid one half of the purchase-money out of his private funds ; and in no instance was the public loan calculated to effect an object so beneficial to the state, as the proposed union of the occupation with the ownership of the land.

It should however be remarked, that the power to borrow a limited amount of public money, is not one of those privileges which would be essential to the successful operation of the Improved Land Tenure ; for it is believed that, with the assistance of the other advantages to be annexed to that tenure, it would, after a short period, become easy for both the owner and the tenant to obtain any requisite advance upon the security of the proposed Land Debentures.

The beneficial principle of the Land Debenture system, was fully admitted by a bill, called the Security for Advances Bill, which was presented to Parliament in the course of the session of 1850, by Sir John Romilly, then the English Solicitor-General, and now Master of the Rolls.

The object of that bill was, to aid the operation of an act passed in the previous session of 1849, for the summary sale of Irish Incumbered Estates. To effect this object, the bill provided that any purchasers of those estates should have the power, to raise one moiety of the purchase money by means of stamped Certificates of Charge, in a prescribed form, and capable of being transferred by registered endorsement.

Upon the appearance of this bill, it was at once regarded as likely to assist in increasing the future prices of the estates to be sold in the Incumbered Estates Court, and thus benefit the owners of those estates and their creditors.

It was however suggested, that some very material improvements might be introduced, by adopting a better class of Land Debenture, instead of the description of Certificate of Charge proposed by the bill; and by enabling the purchaser of an estate, to pay into Court one moiety of his purchase money in the shape of Land Debentures or Certificates, and thus avoid the risk, expense, and trouble of providing the necessary loan, after being declared the highest bidder for the estate.*

In order to counteract an undue prejudice,

* These suggestions were made by the present writer, in a series of letters which appeared in some of the London and Dublin newspapers, in April, 1850. It was in particular urged, that provisions should be inserted in the Bill, empowering the Commissioners for the sale of Incumbered Estates, to accept payment of one moiety of the purchase-money in the form of Land Debentures or Certificates, to be afterwards allocated by them amongst the creditors on the estate; and it was shown, that such an arrangement would be highly beneficial to all parties. This suggestion was immediately adopted in Ireland, by the great body of solicitors and other persons interested in the Incumbered Estates.

which it had been apprehended might exist against the general principle of the Bill, a short petition to Parliament was signed by a large body of the leading Irish solicitors, whose clients were interested in its speedy enactment, either as owners or as incumbrancers of estates about to be sold by the Incumbered Estates Court. The petition approved of the general principle of the Bill, and prayed that it might be passed, either as it originally stood or in an improved form.

It was, however, considered by a numerous class of Irish proprietors, whose estates were partially incumbered, but not to an amount sufficient to subject them to submit to a forced sale in the Incumbered Estates Court, that the proposed Securities for Advances Bill would be unjust as well as injurious towards them, unless its principle should be extended for their benefit, by empowering them to raise money for payment of their

debts, through the means of convenient Land Debentures or Certificates of Charge.

A petition was accordingly signed by many proprietors, incumbrancers, and other persons interested in the land of Ireland.*

The petitioners desired that the provisions of the Incumbered Estates Act, and of the Securities for Advances Bill, should be so extended, as to afford facilities to all proprietors to raise money by means of Land Debentures or Certificates, in the most simple and convenient form, and that such other measures should also be enacted, as might be considered best calculated to enable any landowner to sell and dispose of his estate, in a cheap and effectual manner, or to give simple or available securities for his debts, and thus avert the recurrence of any crisis similar to that which exists at the present time.

* See NOTE IX.—‘Petition of Irish Landowners.’—*post*, p. 251.

This petition was presented to both Houses of Parliament, in the Sessions of 1850, and it received the full support of the representatives from Ireland. The justice of its demand for an extension of the principle of the Securities for Advances Bill, to the case of those landowners whose estates were only partially incumbered, was felt to be most reasonable, and was at once admitted. Clauses for extending the principle of the Bill to the case of those proprietors were prepared and printed, and would have been introduced but for the unexpected intervention of other matters, which either occupied a great portion of the session or contributed to hasten its termination.

There being then no alternative, except to abandon the Bill for that session, or to pass it without delay through both Houses, it became necessary for its proposers to ascertain, whether those Irish members who had advocated the justice of introducing the pro-

posed extension clauses, would then withdraw their opposition and consent to the passing of the Bill in its original shape. Being aware that some purchases had been already made in the Incumbered Estates Court, upon the supposition that the Bill would soon become law, and feeling that it was of an urgent character, the Irish members consented to withdraw their opposition, upon an understanding that they would require the extension clauses to be embodied in a distinct Act during the ensuing session. There remained however one English member,* who absolutely refused to abandon his opposition to the Bill, and expressed his determination to resist it to the utmost. Owing to the advanced period of the session it became necessary to yield to this opposition, and withdraw the Bill.

These circumstances, connected with the introduction and withdrawal of the Securities

* Mr. John Stuart, q.c.

for Advances Bill, have been referred to, in order that they may be rightly understood, whenever the matter shall be re-discussed either in or out of Parliament.

The petition of the Irish landed proprietors, embodies some views strongly suggestive of free trade and free dealing in land, both by facilitating the transfer of the land itself, and by enabling the owner to charge it to a limited extent with convenient Land Debentures. It indicates, on the part of the landowners of Ireland, an anxious desire to become possessed of the valuable power to raise money by means of Land Debentures; a privilege which it is proposed they shall be at liberty to acquire, by voluntarily adopting the Improved System of Land Tenure.

CHAPTER XIII.

OBJECTIONS NOTICED.

It would be in vain to expect, that any extensive change in an established system, can ever be suggested without giving rise to some objections. It is therefore probable, that upon a first consideration of the plan for creating an Improved Land Tenure, difficulties will present themselves to many intelligent minds.

Some persons may consider, that the proposed plan is too innovating in its character; that it is unwise to confer upon the occupying tenant a perpetuity of tenure, with a power to acquire the absolute ownership; or to vest in a Land Tribunal that paramount authority

to transfer the settlement from the land to the fund which now belongs to the Imperial Parliament.

Others may regard the Improved Land Tenure as an incomplete reform, because it will still permit a continuing relationship between landlord and tenant, and will allow estates to be put in settlement.

Most of the objections, which may be suggested against adopting the Improved Land Tenure, have been sufficiently answered by enumerating the various advantages which it would confer upon all parties interested. It will, however, be right to notice, more fully, a few of those matters which may perhaps be regarded as objectionable on the part of the state, the landlord, or the tenant.

If it shall plainly appear that the Improved Tenure will benefit both landlord and tenant, improve the condition of the land, and increase the material wealth and comfort of

all classes in Ireland, it is difficult to anticipate that any public reason can exist on the part of the state for resisting its adoption, with the sole exception of that financial objection alluded to in explaining the advantages of Land Debentures.

The power to create negotiable charges upon the land, is quite essential to the success of any plan for an effectual improvement of the present bad system of land tenure. Therefore a refusal, for state reasons, to sanction, to its fullest extent, the principle of Land Debentures, would amount to a virtual rejection of the proposed plan, by omitting a most material portion of it. The untenable nature, of any financial objection to the creation of Land Debentures has been already explained.*

It is conceived unnecessary to enter into a discussion of the Currency question, which would neither throw any additional light

* See p. 83, *ante*.

upon a practical matter, nor tend to dispel those political prejudices with which the professed financier is accustomed to regard the introduction of any new medium of circulation, however sound and healthy it may be, or well suited to augment the general wealth of the state.

With respect to any objection, that may be suggested on the part of the landlord or the tenant, no member of either of those classes can complain that the creation of a new Land Tenure, in the form proposed, would inflict upon him the smallest amount of injury or injustice; for in no case will it be compulsory to adopt it, and he will be quite at liberty to continue subject to the present mode of tenure.

The only description of coercive influence, to induce any landlord or tenant to concur in adopting the Improved Land Tenure, is that which may arise from a desire to possess the substantial benefits which it is proposed that

it shall confer, and to escape from the intolerable evils inherent in the present land system.

Those advantages and those evils will, no doubt, operate upon his judgment, and will induce him to consult his personal interest by adopting the Improved Tenure.

With respect to any suggestion on the part of the landlord class, that an improved mode of tenure should not confer upon the tenant a right to possess a perpetual interest at a fixed rent, nor a right to purchase the entire ownership at a fixed rate of purchase, it might suffice to repeat, that in no case will those rights belong to any tenant, unless with the full previous assent of his landlord, nor until the landlord shall have considered it for his own interest that they shall be conferred upon the tenant, in return for the great benefits which will be coterminously bestowed upon the landlord himself.

These solid benefits will far more than compensate the landlord for the abandonment of some shadowy rights. By adopting the Improved Land Tenure, the landlord will acquire the valuable privilege to obtain money upon Land Debentures, and will feel absolutely secure of the punctual payment of his rent, so long as it may remain unpurchased by the occupying tenant.

In return for those and for the other advantages conferred upon the landlord, the tenant will be enabled to improve his farm for his own benefit, by obtaining a perpetual interest at a fixed rent, with a right to fine down that rent at a fixed rate of purchase.

No terminable lease will ever induce an occupier, to take the same laudable pride and intense interest in his farm, as he would feel were he possessed of a perpetual property in it, with a power to become the absolute owner. The forms of lease in ordinary use throughout

the United Kingdom, are so constructed as to enable the landlord to harass, in various ways, an obnoxious tenant, and thus retain him in a state of subjection. The interest conferred by a lease, seldom exceeds a term of twenty-one years, or the duration of a single life.

Even that form of lease, called a lease for lives renewable for ever, which was commonly granted in Ireland during the past century, and which most nearly resembled a perpetual interest, was often a precarious and uncertain tenure. This class of leases was recently thus described by a most distinguished judge, pre-eminently qualified to form a correct opinion.

“I am not prepared to go the length of the
“position, that tenants for lives renewable for
“ever are to be considered as having perpe-
“tuities. Every day’s experience shows, how
“very uncertain is the duration of an interest
“under such a tenure. Forfeitures of the

“right to enforce a renewal daily occur,
“through the neglect of tenants, or the dextrous management of landlords. Covenants
“treated, in some cases for more than a century, as entitling tenants to renewals for
“ever, have been construed by courts of justice as not conferring any such right. Any
“person who is much engaged in the investigation of titles, under leases for lives renewable
“for ever, will find, in almost every abstract of such titles, a statement of the result of one
“or more suits in equity for enforcing the right. The usual statement is ;—the right to
“a renewal having been questioned, it became
“necessary to file a bill for a renewal.”*

The inconveniences thus pointed out, led to the passing of a statute,† called ‘The Renewable Leasehold Conversion Act,’ by which a tenant holding under that description of lease, was enabled to convert his pre-

* *Per* Sir Michael O’Loughlen, M.R., in the case of *Hunt v. Browne*.—*Sausse and Scully’s Reports*, p. 192.

† 12 & 13 Vict., chap. 105.

carious tenure into a fee-farm estate, subject to a perpetual rent ; thus partially recognising the good policy of substituting Estate for Tenure. The sound nature of that policy had been previously acknowledged, by the statutes called ‘ The Irish Church Temporalities Acts.’*

It is unreasonable to expect, that any prudent man will sink his capital in the permanent improvement of a farm, whilst conscious that he is subject to a risk of being disturbed in its beneficial enjoyment ; either by eviction under a notice to quit, or by a rigid enforcement of every strict condition in his lease. And it might be truly asserted, that the position of a tenant who holds under a terminable lease, is often but little superior to the dependent state of a mere yearly tenant ; for a six months’ notice to quit is not more formidable, than proceedings to enforce the provisions of a stringent lease. Whilst these powers exist, it is idle to urge the tenant to

* See p. 146, *post*.

exert an improvident industry in the permanent improvement of another person's land; and it is equally unfair to blame the landlord, for retaining the necessary means to protect his property, from those abuses to which it is exposed under the present system of Land Tenure.

As a portion of the general plan for creating the Improved Land Tenure, it has been considered necessary to limit the rent to the fair letting value, fixed by a Land Tribunal; in order to guard against the evils of rack-rents, as well as against all abuses or frauds, through any over-issue and consequent depreciation of Land Debentures. This limit upon the rent will not interfere with any collateral arrangement, that before the particular land be brought under the operation of the Improved Land Tenure, the tenant shall pay to the landlord, or lodge to the credit of the Land Tribunal, such sum of money as may

have been mutually agreed should be given by way of fine. It would not be possible by any legislative enactment to prohibit effectually such an arrangement, and it will be for the interest of both landlord and tenant to permit it, and thus obviate the objection the landlord might otherwise often feel against adopting the Improved Land Tenure.

It will also benefit the landlord, that his tenant shall have a perpetual tenure with a power to purchase the absolute estate. The certainty of obtaining these permanent rights, will frequently induce a tenant to concur in adopting the Improved Land Tenure, and may sometimes make it for his interest to give a sum of money in order to secure them.

To carry out the plan of the Improved Tenure, it will be necessary that all payments shall pass through the Land Tribunal, or through its local banks or offices appointed for receiving and making the payments. The

machinery for effecting this object can be easily arranged. The lodgment of rent, by a numerous tenantry, direct to the credit of a landlord's bank-account, has been already tried for many years, and found to be the system of collection most simple, and most satisfactory to all parties.

Whatever pride the Irish landlord may formerly have felt in being the receiver of his own rents, he cannot at present experience much satisfaction from his efforts at collection, either personally, or through the system of agents, sub-agents, and bailiffs, almost inseparable from the present tenures. It is not necessary to explain to those landlords, who have been in the habit of receiving their own rents, the amount of personal trouble which they undergo in collecting the several items, and in making thereout all proper deductions, allowances, and payments. It is believed, that in most cases the Irish landlord would willingly abandon the irksome

and expensive operation of receiving his rents, either personally or by substitute, for the more satisfactory system, which would insure the punctual lodgment of a fixed net income for his use, to the credit of a Land Tribunal.

Any small office charge, for the trouble of keeping a simple account of receipts and payments, would be insignificant as compared with the expenses and losses attendant upon the present mode of collection.

The adoption of the Improved Land Tenure, as to any land in the occupation of a tenant, would no doubt expose the landlord to the liability of having that portion of his estate converted into ready money, according as the tenant might afterwards be able to lodge an instalment of the purchase-money. This, however, is a liability the landlord will have fully foreseen before adopting the Improved Tenure ; which will have enabled him to dis-

pose of his land, for a price far more than sufficient to compensate him for any inconvenience, that may possibly arise from its conversion into money.

It is believed that each substantial objection, which may perhaps be suggested by some members of the landlord class, has now been fairly stated and fully answered.

Upon the part of the tenant it may be objected, that it would be oppressive to compel him to pay up his rent on or before the very gale day on which it may fall due, or to eject him summarily in case of its nonpayment. It may also be urged, that the adoption of the Improved Land Tenure should be enforced, in all cases, by means of a compulsory valuation, and that the practice called Tenant Right should be established by law.

It will be right towards the tenant class, to consider separately each of these important matters.

CHAPTER XIV.

PUNCTUAL PAYMENT OF RENT.

WITH regard to the objection, that a tenant should not be required to pay his rent on the gale day fixed for its payment, it might be answered, that the punctual payment of a fixed rent will amount to no more than the fulfilment of a solemn contract, on the faith of which the lands have been let, with the great privileges of a perpetual tenure, and a power to acquire the absolute ownership.

But so far as relates to the tenant's own personal interest, there is in truth a much better answer. Although it may apparently benefit a tenant, to be allowed 'a long day'

for the payment of his rent, it would really be much more for the true interest of the entire tenant class, that a habit shall universally prevail, of paying each gale of rent upon the very day on which it falls due. Paradoxical as this statement may at first seem, it is nevertheless literally correct, and might be illustrated by many plain examples, of the substantial benefits which persons invariably derive from a known habit of punctuality in observing their engagements, and of the heavy losses which the opposite habit has always entailed.

One striking example may be deduced, from the facilities with which the mercantile man can at any time obtain a large loan, at a low rate of discount, upon the mere personal security of his bills of exchange. Whereas the Irish landlord, however large and unencumbered his real estate, has never been able to obtain money upon his bill of exchange at

a low rate of discount ; simply because the class to which he belongs, have not possessed a character for punctuality in meeting their engagements, the breach of which does not involve them in any discredit. Therefore their bills of exchange are not regarded as available or profitable securities, and are consequently either rejected, or are charged a high rate of discount.

For a similar reason, it has become habitual with landlords in Ireland, to endeavour to counteract any irregularity in the payment of their rents, by reserving much higher rents than it would be for their interest to charge, or than they could obtain, in case the rent were always punctually paid on or before the appointed day. It would be more for their interest, that moderate rents shall be punctually lodged in bank, on or before the appointed day, than that excessive rents shall be reserved, with the present vexatious remedies for obtaining payment.

Or take a more homely, and perhaps a more appropriate example.

The keeper of a livery stable can well afford to hire out his horses, either by the day, month, or year, at a reasonably low rate of charge, provided he can calculate that his customer will punctually pay him the sum agreed upon, and will, at the end of the stipulated time, restore the horses in good condition.

If, however, the customer not only does not pay the sum agreed upon, but compels the owner of the horses to incur heavy law expenses in recovering the amount, and also illegally retains the horses by force beyond the stipulated period, and eventually delivers them up in a bad condition, when compelled to do so through another lawsuit, it is plain that under such circumstances the owner of the horses will be a very large loser by the transaction, and that he must thereafter altogether abstain from letting out his horses to

the same customer, no matter how large a sum he may offer for their future use.

This latter instance is not given, for the purpose of suggesting that an extreme want of punctuality in payment of their rents, or an inclination to exhaust the condition of the land, are habits natural to the occupying tenants of Ireland. Such habits, however, are not uncommon under the present land system. The example is mentioned in support of the plan which has been proposed; and in order to demonstrate more plainly, that it is for the mutual interest of both landlord and tenant, that the land shall be set at a moderate rent, and that its punctual payment shall be rigidly enforced.

It may be added, that to a system which is based upon Land Debentures bearing interest, it is quite essential that funds shall be regularly provided sufficient for punctual payment of the interest.

That it is not Utopian to contemplate the existence of an uniform custom, on the part of all Irish tenants, to pay their rents on the very gale days, sufficiently appears from the extreme punctuality with which rents have been paid on audit days, throughout England and Scotland. Relying upon this punctuality, it has been the frequent practice for local banks in Scotland to advance money to a landlord, upon the security of a bill of exchange, payable on his next audit day.

CHAPTER XV.

COMPULSORY VALUATION.

WITH regard to the objection, on the part of the tenant class, that the adoption of the Improved Land Tenure should be enforced in all cases by means of a compulsory valuation, it is conceived, that it would not be prudent nor just towards the landlord or the tenant, that either party shall, in the first instance, be coerced by law into an adoption of the Improved Tenure. The important privileges proposed to be conferred, and the various inconveniences of remaining subject to the present laws regulating the tenure of land, would be found amply sufficient to induce and almost compel all

landlords and tenants to adopt the Improved Tenure voluntarily, within a short period.

Any system involving a compulsory valuation of land, and a coercive ascertainment of the future rent, would probably be regarded, by a majority of the Legislature, as an unjust and visionary scheme, calculated to interfere unduly with private contracts. Many landowners would be strongly disinclined to have their rents regulated by any system of compulsory valuation, however perfect. The effect would be, that few would feel disposed to set their lands, and some might be induced to resume the possession from their present tenants.

It might thus happen that an Act of Parliament, the theory of which would be to benefit the tenants of Ireland, by securing to them a more permanent interest in their holdings, through the means of a compulsory valuation, would be found in practice to have a contrary effect. Some statutes passed with

the professed object of protecting the tenants of Ireland, have operated to their prejudice. The Irish Poor Law Acts contain clauses which were apparently calculated to benefit the poorer classes of tenants, but which have had the practical effect of increasing their former poverty, and contributing to their destruction. One of those Acts was, that by which the immediate lessor of a tenement, not rated higher than £4 a year, is subjected to the entire poor rate, and his tenant rendered altogether exempt.* The direct effect of that Statute was, to occasion the demolition or eviction of a large number of that class of tenements.

Although it would not be prudent to attempt, in the first instance, to introduce the Improved Land Tenure otherwise than with the full consent of the parties, nevertheless, after the lapse of some years, and when

* 6 & 7 Vict., c. 92, s. 1.

it shall have been generally adopted, and been found to work well in practice, it may become desirable to devise some fair mode for rendering it universal, by force of an Act of the Legislature. A similar course was taken to facilitate the conversion of tithes in Ireland, by means of voluntary compositions for limited periods, and afterwards to render compositions for tithes universal, perpetual, and compulsory.*

But perhaps the most apt analogy is the final substitution by statute, of the more secure tenure by free and common socage, for the uncertain feudal “tenures by knight-service, and *in capite*, and the consequents “upon the same, which had been found “more burthensome, grievous, and pre-“judicial to the kingdom, than beneficial “to the King.”†

* See Acts of 4 Geo. IV., c. 99; 5 Geo. IV., c. 63; 2, 3 Will. IV., c. 119.

† See 12 Car. II., c. 24, Engl.; 14, 15 Car. II., c. 19, Ir.

Of this statute a distinguished writer has observed, that it was "a greater acquisition
" to the civil property of the kingdom, than
" even Magna Charta itself; since that only
" pruned the luxuriances that had grown out
" of the military tenures, and thereby pre-
" served them in vigor; but the statute of
" King Charles extirpated the whole, and
" abolished both root and branch." *

It may be seriously doubted whether the
'wardships, liveries, primer seisins, ouster-

* 2 Blackst. Comm., ch. 5.—The statement, that military tenures were extirpated by the Statute of Chas. II., is correct, so far as it relates to many of the feudal services which had been imposed after the Norman Conquest on the tenants *in capite* and other great landowners, who were, in effect, head landlords of the country. Immediately upon the Restoration (A.D. 1660), the great lords insisted on a relaxation of their own feudal duties to the Sovereign; but the feudal relationship between them and their tenants was retained in its full vigor. It is therefore to some extent inaccurate to suppose, that "the Statute of Charles extirpated the whole of the military tenures, and abolished both root and branch."

lemains,' and all the other absurd and oppressive consequences upon those obsolete portions of the feudal tenures, were more injurious to the state and its people, than the undigested mass of modern legislation which now confuses the relationship between the landlord and tenant in Ireland.

It will be for the advantage of each industrious tenant to feel assured, that the idea of now forcing all owners or landlords to part with their lands for maximum rents or fines to be fixed by public arbitrators, or by juries of farmers, or through any other mode of compulsory valuation, is one of those delusions, which can end only in a sacrifice of the attainable for the unattainable, of the substantial benefit for the impracticable scheme.

With an equal show of reason, and with as good chances of success, might the laborer seek to fix by compulsory valuation the minimum rate of his daily hire; or might the

butcher expect to regulate the maximum price at which the farmer shall be forced to sell his cattle and sheep.

The practical result, of any general system of compulsory valuation would be, to leave the laborer unhired and the cattle and sheep unbred, and in like manner to leave the land unlet.

For these and other obvious reasons, it is the plain interest of the tenant class to abandon an idea which in principle is utterly unsound, and in practice would prove most injurious to both landlord and tenant, and possibly end in a depopulation of the country.

A proposition is, however, now popularly urged in many parts of Ireland, to the effect that a permanent measure should be enacted, to regulate all future dealings between landlord and tenant, by entitling the latter to acquire in each case a permanent tenure, at a rent to be fixed by some mode of compulsory

valuation. This proposal has evidently originated from confusing a permanent solution of the general land question, with a settlement of those temporary difficulties which have been referred to in a former chapter.*

Any remedy for temporary hardships should be of a temporary character, and suited to the special case of each existing tenant. The most zealous advocates, for a compulsory mode of valuation, will scarce contend, that after a tenant may have acquired a perpetual interest at a valuation rent, he shall never be permitted to part with the occupation, otherwise than by submitting to a compulsory valuation; the effect of which he could most easily evade by stipulating for some collateral benefit or pecuniary fine, in addition to the valuation rent.

All confusion on this subject can be avoided, only by separating the two branches of the land question—the temporary and the per-

* See Chapter ii. ;—*ante*, p. 5.

manent—which, as already explained, rest upon different grounds, and should be kept wholly distinct.*

* In reference to a settlement of the existing differences between landlords and tenants, by conferring upon the latter permanent interests, based upon compulsory valuations, Mr. Sharman Crawford, M.P., the consistent advocate for establishing by law the Ulster custom of Tenant Right, has thus expressed his opinions, in a letter addressed to the Tenant League societies of the county of Meath:—

“ Such a settlement is, in my judgment, a premium upon idleness and a fine upon industry ; an invasion of the rights of labor, on which all property is founded ; a grievance to the laborer, whose property depends on employment and increased production of food. I have been told this proposition is justified on the plea of necessity, for the protection of the poor occupiers of Ireland from arbitrary eviction. I admit this plea : but I answer,—let this protection be given in a mode suited to meet their special case. I have no doubt that a valuable measure could be obtained from Parliament ; but if a principle, affecting in so strong a manner the rights of property, be brought before the Legislature, the favorable position will be lost. The contest will be recommenced, on what I fear is an untenable position ; and I apprehend that all the present poor tenants of Ireland may die off, and the richer ones emigrate, before the most diminutive measure of relief for them can be obtained, under an agitation founded on such a basis.” (See this letter in the *Dublin Freeman's Journal* of April 22, 1851.)

CHAPTER XVI.

TENANT RIGHT.

THERE is, however, one class of Irish tenants, who can perhaps justly urge, that through the past acquiescence and acts of their landlords they have acquired strong claims to possess permanent interests; and, for this purpose, to have their lands brought under the Improved Land Tenure, at the existing rents, subject to such fair modifications and covenants as may be required by the particular circumstances of each case.

A vast proportion of the land of Ireland is held by mere yearly tenants, who are absolutely dependent upon the caprice of their landlords; being liable, upon a short notice,

to be deprived at any time of their holdings, with all subsisting improvements. But in some parts of the country, and especially in the province of Ulster, a well-recognised practice or custom has grown up, and been acted upon for many years. The substance of this custom is, that the tenant shall not only be permitted to hold his farm, so long as he may continue to pay a fair rent, but shall also be allowed to transfer the farm to an eligible tenant.*

The yearly tenants of those properties upon which that custom has prevailed, have been regarded as possessing permanent interests in their holdings. They have therefore frequently improved the land, and increased the letting value. In many instances the tenants

* A more full description of the Ulster Tenant Right, is given in the preamble to "A Bill to provide for the better securing and regulating the custom of Tenant Right, as practised in the province of Ulster, &c.," introduced on the 10th of June, 1850, into the House of Commons, by Mr. Sharman Crawford, M.P.

have purchased their farms, with the distinct consent of the landlords, and relying upon the faith of the Tenant Right custom. In those cases the purchase-money was either paid to the landlord himself, in discharge of arrears due to him, or was paid to the outgoing tenant to purchase his good-will in the land. Indeed it is well known, that the existence of this permissive custom was mainly owing, to the easy means which it provided for enabling a landlord to part with a bad tenant, without suffering any loss, and at once procure a solvent tenant, who would not only pay up all arrears of rent, but would also pay an additional sum, to buy from the outgoing tenant his good-will of the holding.*

* It has been generally supposed, that the Tenant Right custom originated in those parts of the province of Ulster, called 'The Ulster Plantation,' and was afterwards extended into other parts of that province. It probably arose upon the termination of those improving leases granted pursuant to the Plantation Scheme of King James I.

But for the existence of this custom, the landlord might often have had to abandon all old arrears of rent, and also to buy out a bad tenant. It follows from these statements, that many of the present tenants have given valuable money considerations to their landlords, and have been thereby permitted to establish strong claims to possess permanent interests in their farms. Under such circumstances it could hardly be just for the landlord, after accepting a portion of the purchase-money paid by the tenant, to turn round and deprive him of his purchased farm, either by serving notice to quit upon the title, or by unduly raising the former rent.

It is believed, that the foregoing statements are a fair representation, of the cir-

By that scheme it was made imperative, that large tracts of those confiscated lands, which had been recently taken from their ancient Irish occupants, should be let, for long terms, to new tenants from England or Scotland.—(See a copy of the Plantation Scheme in Harris's *Hibernica*, p. 105.)

cumstances which have given rise to the Ulster claim of Tenant Right.

The question is, whether that which has been customary shall be made compulsory; and whether a permanent interest, which has hitherto been sanctioned by the will of the landlord, shall in future be sustained by an act of the Legislature.

Those who oppose the compulsory establishment of Tenant Right, insist that the term is a total misnomer; deny the existence of any such right; contend that it would be most unjust towards the landlord, to convert a permissive custom into an adverse tenancy; and assert that the mere discussion of the question is calculated to injure the tenants themselves, by disturbing the friendly relations which have heretofore subsisted, and by tempting landlords to deny, when claimed as a right, the permanent tenure which they have hitherto allowed permissively.

It must however be admitted, by impartial persons, that this question of Tenant Right being now fully raised, it is for the interest of both landlord and tenant that it shall be set at rest and disposed of, in one way or other, so as to restore the former good understanding between them, and enable them to co-operate again for their mutual advantage.

Those who may consider that the customary holding called Tenant Right, dependent upon the will of the landlord, should in future be converted into a permanent interest, dependent upon punctual payment of the rent, either through an adoption of the Improved Land Tenure, or in any more satisfactory manner, may rely upon the reasons suggested above; and can also refer to the mode by which the precarious Feud* became an hereditary estate;

*The Feud, in its origin, was held at the mere will of the lord, and afterwards but for a single year. Subsequently it became a life interest, and eventually an hereditary

as well as to that permissive practice, which converted the tenure by villenage into the perpetual tenure by copyhold, so common throughout England.

The analogy arising from the conversion of an insecure tenure by villenage, into the permanent tenure of copyhold, resembles the proposed conversion in many respects. But to constitute a permanent right, copyhold was deficient in that most material ingredient, which exists as to many holdings affected by the custom called Tenant Right. For it does not appear that the villein, or tenant by villenage, had ever paid any valuable consideration, to entitle him to be regarded by his lord as having purchased a permanent interest in the soil.

estate. In England hereditary Feuds were established soon after the Norman Conquest. "The Feud, which was at first but a tottering possession, at the will of the lord, growing at length to be an irrevocable estate, descending by many successions from son to son, became at last to be an absolute inheritance." *Spelman on Feuds*, chap. ii.

The following extracts from the standard works of two eminent judges of England, and from the most distinguished historian of its laws, will show the origin of English copyhold tenure, and exhibit a close analogy to the Irish Tenant Right.

“ Under the Saxon Government there were
“ a sort of people in a condition of downright
“ servitude, used and employed in the most
“ servile works; and belonging, both they
“ their children and effects, to the lord of the
“ soil, like the rest of the cattle or stock
“ upon it. These seem to have been those
“ who held what was called the folk-land,
“ from which they were removable at the
“ lord’s pleasure. They resembled the Spartan Helots, to whom alone the culture of
“ the land was assigned. They held indeed
“ small portions of land, by way of sustaining
“ themselves and their families; but it was
“ at the mere will of the lord, who might
“ dispossess them whenever he pleased;

“ and it was upon villein services, that is, to
“ carry out dung, to hedge and ditch the
“ lord’s demesne, and any other the meanest
“ offices ; and their services were not only
“ base, but uncertain both as to their time
“ and quality.

“ These villeins, in process of time, gained
“ considerable ground on their lords ; and in
“ particular strengthened the tenure of their
“ estates to that degree, that they came to
“ have an interest in them, in many cases full
“ as good, in others better than the lords.
“ For the good nature and benevolence of
“ many lords of manors, having, time out of
“ mind, permitted their villeins and their
“ children to enjoy their possessions, without
“ interruption, in a regular course of descent,
“ the common law, of which custom is the
“ life, now gave them title to prescribe against
“ their lords ; and on performance of the same
“ services, to hold their lands, in spite of any
“ determination of the lord’s will.

“ Thus copyhold tenures, although very
“ meanly descended, yet come of an ancient
“ house ; for it appears, that copyholders are
“ in truth no other but villeins, who, by a long
“ series of immemorial encroachments on the
“ lord, have established a customary right to
“ those estates, which before were held abso-
“ lutely at the lord’s will.”*

Again, with respect to tenants by villenage,
it has been stated :—“ They were, for a long
“ time, left merely to the conscience of their
“ lords, which they might as they could
“ awaken by their petitions, but could not
“ otherwise deal with.”†

“ Their lords could not, in honor or con-
“ science, deprive them of their possessions,
“ while they performed their services ; but
“ the conscience and honor of their lords
“ were their only support. However, the ac-
“ quiescence of the lord, in suffering such

* Blackst. Comm., Vol. II., ch. vi.

† Wright’s Law of Tenures, p. 219.

“ persons to succeed to the land, in a course
“ of years advanced the pretensions of the
“ tenant in opposition to the absolute right
“ of the lord, until at last this forbearance
“ grew into a permanent and legal interest,
“ which in after times was called copyhold
“ tenure.”*

From the foregoing extracts it would appear, that the copyholder's legal right to hold his farm in perpetuity, upon performing the same services, was originally acquired, through a mere permissive occupation, for a long period, in a course of regular descent. A similar permissive occupation, through many generations, could be shown by many tenants who now rely upon the Tenant Right custom; and they could, in addition, often establish the much stronger claim, arising from a purchase to which the landlord was himself a party assenting, and

* Reeves's Hist. of Engl. Law, Vol. I., ch. ii.

also participating in the price.* But, even in such a case, the moral claim of the tenant, to possess a permanent interest, is not (in legal parlance) clothed with that prescriptive title, conceded to the exercise of “a custom which hath been used, from time whereof the memory of man runneth not to the contrary.”†

According to the ancient common law of England, this ‘time of memory,’ or ‘time out of mind,’ which conferred a prescriptive title, was originally understood to signify, that “no man then alive hath heard any proof to the contrary, nor hath any knowledge to the contrary.”‡ But a title, derived from this immemorial usage, might then be displaced by independent evidence, that the usage had not existed at some former period, however remote.

* For numerous instances, see Index to the Devon Commission Report, vol. iv., p. 408.

† Littleton, sect. 170.

‡ *Ibid.*

Afterwards, through the effect of a statute* of Edward I., time of memory became limited to the commencement of the previous reign of Richard I.—an interval, on the passing of that statute, not much exceeding eighty years. The intervening time has since become increased, into a period exceeding six hundred and sixty years. Any prescriptive title, claimed as founded upon immemorial usage, can still be destroyed by evidence, that at some time since the year 1189, there was a period, however short, during which the custom relied upon did not exist.†

Although many tenants could succeed in establishing an uninterrupted occupation for a period exceeding eighty years, either in themselves or in those whom they represent, there is probably no estate in Ireland, with

* Westminster, I. c. 39.

† “It seems unaccountable, that the date of legal prescription or memory should continue to be reckoned from an era so very antiquated.”—*Blackst. Comm.*, Vol. II., p. 31, n.

regard to which it is not an easy matter to demonstrate, that at some period since the year 1189, no custom could have existed upon it, similar to that now known as Tenant Right.

It has been shown, that the English copyholder's legal right to a perpetual tenure, originated with an immemorial usage, assisted probably by the ancient statute of Edward I. However equal or superior may be the moral claims of many Irish tenants to possess permanent interests, it is plain that the Tenant Right custom, unaided by a new Act of Parliament, will not suffice to convert those moral claims into legal rights.

It would be easy to dilate further upon this question of Tenant Right; to discuss its several details; to show that the custom varies in some particulars, according to the past practice upon different estates; and to mention those numerous disputes and irritations which

daily arise between landlord and tenant, through attempts, on the part of the one, to abridge, or of the other to enlarge, the exercise of this unsettled custom.* But it is conceived, that for the present it will be better to abstain from entering more fully into this branch of the Irish Land Question, and from suggesting more distinctly the mode by which it might be justly settled.

It may however be mentioned, that a question of a similar character was recently set at rest by those statutes, called the Irish Church Temporalities Acts,† which conferred the power to convert into fixed perpetuities the short and uncertain tenures called bishop's leases, renewable at the will of each successive bishop.

* Ample materials for considering all these details, are collected in the Index to the Devon Commission Report, Vol. IV., p. 408.

† See the Acts of 3 & 4 Will. IV., c. 37; 4 & 5 Will. IV., c. 90; 6 & 7 Will. IV., c. 99.

Were the temporary difficulties occasioned by the sudden fall in the annual value of land equitably adjusted, the question called Tenant Right satisfactorily arranged, and the landlord and tenant empowered to adopt, by voluntary agreement, the Improved Land Tenure, it is believed that all reasonable grounds for future complaint, on the part of the tenant class, would be wholly removed. Each person, desirous to possess any land, would thenceforth be in a position to deal with the owner upon equal terms, and to arrange as to its rent or price, in the same manner as for the hire or purchase of any other commodity.

It is not pretended here to anticipate all difficulties, of a minor nature, which may arise with respect to the general outline now presented of an improved system of Land Tenure. These might all be provided for or removed, when filling up the details of any

measure. It may require much practical knowledge and professional skill to frame an Act of Parliament, well calculated to effect the proposed objects. This is perhaps the only real difficulty : but the same objection would have applied, with greater force, to the preparation of many recent statutes, of a more elaborate character than any Act of Parliament which would now be required, for the purpose of establishing a more simple system of land tenure in Ireland.

The objection, that the Improved Land Tenure does not go far enough towards simplifying and improving the present land system, will now be removed, by presenting the outline of a more simple and extensive measure of reform, to be called 'The New Land System.'

CHAPTER XVII.

THE NEW LAND SYSTEM.

THE foregoing statements, of the principles and details of the Improved Land Tenure, may suffice to exhibit its superiority over the present mode of tenure. It has been shown that a general adoption of this Improved Tenure would be advantageous to the state, and at the same time confer many benefits upon owners and occupiers of land, as well as upon other industrial classes. In devising that plan, provisions were made for continuing those portions of the present land system, which imply a rent-paying relationship between landlord and tenant, and which permit land to be encumbered with settlements, involving a deduction of title.

Although it is conceived that under the Improved Land Tenure legal titles to the land, and to the charges upon it, would be much simplified, it is nevertheless not denied that the Improved Tenure, as suggested above, would still be an artificial system, neither so simple as might be constructed, nor conferring so many benefits as would be derived, from substituting for the present tenure a New Land System, better calculated to develop the natural qualities of the land, and the consequent prosperity of all persons interested in increasing its value.

A perfect land system should have for its leading feature, a complete conversion of the precarious and dependent relationship of Landlord and Tenant, into the more permanent and independent position of Seller and Purchaser. It should facilitate dealings in land, by imparting to its inert mass those transferable properties which belong to a movable article of commerce. It should

effectually emancipate the land ; arouse its inherent activities ; remove the servile relationship forced upon it ; and, by these means, enable it to take its natural stand, at the head of those various powers, which constitute the strength and wealth of the empire.

In order to assist in discovering the most proper mode of attaining those objects, another plan will be suggested, called ‘ The New Land System ;’ to distinguish it from the plan already explained, and designated ‘ The Improved Land Tenure.’

Although it has been considered convenient to keep the one plan distinct from the other, it will be observed that the two plans are similar in some material respects. The New Land System will be found to embrace the advantages of the Improved Land Tenure, in a better form. It will be based upon a more perfect system of those Land Debentures already described,* and which, in con-

* See Chapter xii. ;—*ante*, p. 79.

nexion with the New Land System, shall be called Land Certificates.

Upon introducing the New Land System, it will be necessary that the Land Certificates shall be divided into two classes.

The form and amount of each Certificate, are amongst those matters of detail which can be properly confided to the judgment of a Land Tribunal, and need not be fixed by any Act of Parliament creating the New System.

The First Class Certificates, should be as convertible and as secure as the best bank-notes. In order to be so, those Certificates should be transferable by mere delivery, and be limited to an amount not exceeding one half of the selling value of the property, as tested by the impartial valuation of a public Tribunal.

The Second Class Certificates will be less convertible, and less secure ; but these will be

required, in the first instance, in order to afford adequate means for abolishing the present rent system, by supplying a substitute for rent, and enabling the tenant to purchase it by convenient instalments.

The form of these Second Class Certificates would be regulated by the Land Tribunal. Their total amount in each case should be fixed by private arrangement between the parties, but subject to the approbation of the Land Tribunal; whose consent might, in some cases, be requisite, in order to protect the rights of third persons interested in the property. Each Second Class Certificate should be redeemable, upon payment of its amount at any time, after giving a short notice; and for this reason it must remain in the custody of the Land Tribunal, until it is redeemed; but in the meantime the value which it represents may be specially transferred, at the request of the person entitled to it.

The First Class Certificates may be payable upon a remote day, fixed for their payment. It is not improbable that a more enlarged experience, in the practical working of the proposed system, would enable the Land Tribunal to make some improvements in the form of the Certificates. In some cases it might be considered preferable to create a description of First Class Certificates, redeemable at any time, either with the consent of their holder, or by transferring to him at par an equivalent amount of similar First Class Certificates charged upon other lands. Should this form of First Class Certificate be adopted, it might be called 'Redeemable,' and the other form 'Terminable.'

This description of Redeemable Certificates would be attended with some advantages, to both owner and occupier. For the occupier could never be compelled to pay them off, until it might suit his own convenience to redeem them, by the purchase and transfer of

similar First Class Certificates; and the owner or holder of these Redeemable Certificates could calculate upon always receiving a fixed income, derived from the interest payable on First Class Certificates.

The property in the land, represented by Land Certificates, would become personal property, and be distributed as such amongst the family of their holder. Property in land might thus be conveniently distributed, without leading to any minute subdivision or *morcellement* of the land.

Having thus alluded to a few of the most leading features in the New Land System, it will be necessary now to explain it more in detail. For this purpose, an outline of a plan shall be stated, in a propositional form, which may perhaps be too precise and technical to interest the general reader. A familiar example will then be given, in order to exhibit the probable operation of the proposed plan.

CHAPTER XVIII.

PLAN OF THE NEW LAND SYSTEM.

1. WHENEVER the owner of any land and his occupying tenant, or the owner alone if he be also occupier, shall wish to have the land brought under the operation of the New Land System, let such desire be expressed to the Land Tribunal, by a written proposal in a prescribed form.

2. Having received such proposal, let the Land Tribunal proceed to have an accurate map made of the land, to ascertain its fair letting value, and to examine the title.

3. Let the Land Tribunal open a Book in their Land Office, and enter therein a map of the land, its fair letting value, the names of the owner and occupier, with the nature of

their respective interests ; and let an authentic statement, of any trusts or limitations then affecting the land, be also deposited in the Land Office.

4. Let the Land Tribunal thereupon be at liberty to make a judicial declaration, that the particular land shall thenceforth be held under the New Land System.

5. Having made such declaration, let the Land Tribunal proceed to convert the property in the land into its equivalent value in Land Certificates ; of which there should be two Classes, both payable to the Land Tribunal, and authenticated by its judicial signature or seal.

6. Let the amount of all First Class Land Certificates, charged upon any land, not exceed ten times its fair yearly value, as fixed by the Land Tribunal.

7. Let the Second Class Land Certificates be for such additional amount as, together with the First Class Certificates, the owner

and the occupier may have mutually agreed is the selling value of the land.

8. Let all the Land Certificates be prepared by the Land Tribunal, in a prescribed form. Each Land Certificate might conveniently be for the uniform sum of £25, bearing four per cent. interest, or one pound per annum, to be payable half-yearly, on every first day of January and first day of July.

9. The amount charged by each First Class Land Certificate, may be made payable upon some future first day of January, not exceeding ten years from the date of the Certificate.

10. The amount charged by each Second Class Certificate, may be made payable upon any gale day, after six months' previous notice of an intention to pay it off shall have been given by the occupier to the Land Tribunal.

11. Let each Land Certificate state the name of the townland, with the barony and

county in which it is situate, and also give a correct outline or map of the particular land which it affects.

Such outline would form a most valuable description and identification of the land. It would add to the value of each Certificate, and could be lithographed for a whole set of Certificates, at a very trifling expense.

12. As a general rule let each Land Certificate be charged upon one townland only, and be rarely permitted to affect more than two, or at most three townlands.

13. Let each set of Certificates bear consecutive numbers, with an appropriate reference to the Land Book which relates to the particular land.

14. Let each First Class Certificate specify the full amount of all the First Class Certificates; and let each Second Class Certificate specify the full amount of all the First Class, and also of all the Second Class Certificates, charged on the particular land.

15. Let the amount of each Certificate, and also the half-yearly interest, be made payable into the local Bank of the Land Tribunal to its credit there.

16. In the case of an absolute unencumbered owner of the property represented by the Land Certificates, let him be at liberty to require that all the First Class Certificates shall be endorsed and delivered to him by the Land Tribunal.

17. In the cases of a limited owner, or of a fiduciary owner, let all the First Class Certificates remain in the custody of the Land Tribunal; but with a power to issue the whole or some of those Certificates to third persons, for the benefit of all parties interested in the land.

18. Let any First Class Certificate, which may have been endorsed by the Land Tribunal, either to the owner, or to any third person, be afterwards negotiated and transferred by simple delivery.

19. Let each holder of a First Class Certificate be at liberty to transfer it, either with or without the collateral security of his own personal liability for its future payment.

20. In the case of an absolute and unencumbered owner, let him be at liberty to require the Land Tribunal to endorse any Second Class Certificate to any third person; thereby transferring to him the absolute property in such Certificate, which, however, will still continue in the custody of the Land Tribunal.

21. In the cases of a limited owner or of a fiduciary owner, let the Land Tribunal have a power to endorse the whole, or some of the Second Class Certificates, to third persons, for the benefit of all parties interested in the land; thereby transferring the absolute property in the endorsed Certificates, but retaining the custody of all the Second Class Certificates.

22. Let all Second Class Certificates remain in the custody of the Land Tribunal, until they shall either have been cancelled, with the mutual consent of both owner and occupier, or paid off by the occupier, who shall be at liberty to pay off a Second Class Certificate upon any gale day, after giving six months' previous notice to the Land Tribunal.

23. Let each Certificate, upon its original creation, be entered by the Land Tribunal in their Land Book, as a charge upon the land affected thereby; and when a Certificate shall have been paid off, let it be forthwith marked as paid, and be cancelled by the Land Tribunal.

24. Let each payment, in respect of the interest or of the principal of any Land Certificate, be lodged in Bank by the occupier of the land, to the credit of the Land Tribunal, and be then transferred to the credit of the person who may be entitled to receive such payment.

25. When any First Class Certificate shall have reached its maturity, let the occupier have the right to pay it off, and either to hold the land discharged therefrom, or to obtain another Certificate for a similar amount from the Land Tribunal; and in case the occupier shall fail to pay off such Certificate, then let the owner have a right to pay it off and to obtain a similar Certificate; but in case of its not being paid by the occupier or by the owner, then let the Land Tribunal raise the amount, either by a summary sale of the land, or by endorsing a new Certificate to some third person.

It should, however, be understood that no occupier shall be privileged to pay off a First Class Certificate, until after he shall have discharged all Second Class Certificates affecting the land.

It should also be understood, that the Land Tribunal shall possess the power to issue a different species of First Class Certi-

ificates, in the 'Redeemable' form already described.*

26. In any case where a default has occurred, in payment of the interest due upon any First Class, or upon any Second Class Certificate, or in payment of the amount of any Second Class Certificate with respect to which the Occupier may have given a regular notice of payment, let the Land Tribunal sell the land, subject to the amount of all First Class Certificates, and apply the purchase money in paying all interest due on the First Class Certificates, and the amount of all Second Class Certificates, and then hand over the surplus to the person who may be entitled to receive it.

27. Let such sale be made by the Land Tribunal in a cheap, simple, and expeditious form, after due notice to the parties interested; and be perfected by a judicial entry in the Land Book of the Land Tribunal.

* See *ante*, p. 154.

28. Let any owner or occupier, by a judicial entry in the Land Book of the Land Tribunal, be at liberty to transfer his own beneficial interest in the land, or in such of the Land Certificates as may remain in the custody of the Land Tribunal.

29. When all the First Class Certificates shall have been paid off, let the Land Tribunal have power to create new Certificates, to be founded upon a new valuation of the land; and let the Land Tribunal make equitable regulations, for having such new valuation made at the expiration of each successive period of ten years, and for issuing a new set of First Class Certificates to an amount not exceeding ten times the fair annual value; but so as not to interfere with the existing rights and liabilities of either the owner or the occupier.

30. Let it be declared, that after all existing trusts and limitations shall have expired, it shall be no longer lawful to subject the

land to any settlement, or to charge it otherwise than with Land Certificates in the manner described.

31. Let it be also declared, that the Holder of each First Class Land Certificate, and the Judicial Endorsee of each Second Class Land Certificate, shall be absolutely entitled to receive the amount of any principal or interest due upon that Certificate, without regard to any trusts to which the money may be subject in the hands of such Holder or Endorsee.

32. Let the Land Tribunal possess powers, to realize any personal judgment or decree obtained against a person interested in any land; either by a summary sale of his interest, or by charging the land with Land Certificates in favor of the creditor.

33. Let the Land Tribunal also have such general powers, as will enable it to provide, in a fair manner, for those unforeseen difficulties which may be expected to arise, upon the first application on a large scale of an

untried system; and let the Land Tribunal likewise possess a discretion, sufficiently extensive to deal with exceptional cases.

As instances of such exceptions, it may be mentioned as probable, that neither the New Land System, nor the Improved Land Tenure will be found so applicable to town houses as to country farms; and there may always be some tracts of land, such as family demesnes, which can occasionally be let for short terms, but in no other manner. In such instances, the Land Tribunal should have the power to sanction a letting, suited to the circumstances of the particular case, but without imparting any peculiar privileges to the owner or occupier of the land.

In the case of middle interests, the amount payable in respect of head-rent might be valued, and the head-rent converted into its equivalent value in Land Certificates. The same principle could be applied to the con-

version of all other charges upon the land,—such as, crown-rents, quit-rents, tithe rent-charges, determinable or perpetual annuities, mortgages, family charges, and judgments. So long as any annuity might continue unredeemed, a full equivalent for its value should be deducted and retained by the Land Tribunal out of the amount of the Land Certificates.

From the foregoing outline it will be perceived, that the practical effect of adopting the New Land System, would be, to convert the ordinary relationship of Landlord and Tenant into that of Seller and Purchaser, and to possess, in a different form, but in a higher degree, those important advantages already enumerated as belonging to the Improved Land Tenure.

The New Land System, by converting the property in the land into Land Certificates of equivalent value, would render it as transferable as personal property. The Certifi-

cates, or the money value which they would represent, might be put into settlement, and there would no longer be any necessity for having intricate settlements of land.

The land would be represented by those transferable Land Certificates; and in lieu of complicated systems for registering all deeds, acts, and incumbrances of various sorts, affecting the land, there would thenceforth be substituted the most simple forms of charge and transfer.

Under the proposed system, the smallness in the amount of Land Certificates, or their distribution amongst several persons, will not tend to subdivide the land. Any apprehension upon that ground could easily be removed at any time by the Land Tribunal, by the simple process of raising the Land Certificates from the sum of £25 to a sum of £50, or of £100 each.

With the increasing prosperity and means of all classes, it might eventually be arranged to abolish the power of creating any Second Class Land Certificates—thus simplifying still further the New Land System, identifying the ownership with the occupation of the land, and preventing its being charged beyond a moderate amount. This arrangement would not interfere with a summary sale, to pay any personal debts of the occupying owner; but would only prevent him from incumbering his land, beyond the amount covered by the First Class Certificates. The practical effect would be, that, with some necessary exceptions, the present dependent relationship of landlord and tenant would cease to exist; and the general estate in the land would be that of a fee simple owner in actual occupation, subject only to such First Class Certificates as may be circulating in the hands of third persons.

There can be no difficulty in enacting, that no Land Certificate shall be held by a foreigner. This was done with regard to the government land-loans created in Prussia. Were it possible also to provide, that no Land Certificate shall belong to persons permanently resident out of Ireland, this would be 'a consummation devoutly to be wished : ' so long, at least, as Ireland and England shall continue to be treated as separate countries, and their legislation kept distinct. But it is conceived, that such a provision would not be entertained by the Imperial Legislature ; and, were it to exist, its effect might be, to defer that absolute identification of the two countries, and of all their laws, so essential to their mutual well-being.

In order to introduce a better land system into England or Ireland, it may be considered necessary to maintain the existing tenure of land, so far as regards the relationship of

landlord and tenant; and for this purpose, it may be deemed desirable to devise a third plan, compounded from the two plans which have been proposed.

But any plan that can be suggested must remain of a speculative character, until those who are interested in the land, and the rulers of the country, shall have fully acknowledged the absolute necessity for adopting a better land system, and have plainly seen that vast benefits will follow from uniting the ownership with the occupation of the land, and freeing it from all useless fetters.

For the present, an important object will have been attained, if the above suggestions, and the plans proposed, shall have the good effect of directing more attention to the great Land Question; of supplying useful ideas to practical minds; and of assisting in the discovery of some simple cure, for the unendurable evils arising from the existing system of Land Tenure.

CHAPTER XIX.

EXAMPLE OF THE NEW LAND SYSTEM.

THE following example is given, for the purpose of explaining, in a familiar form, the probable operation of the plan called the New Land System.

A townland containing two hundred and forty acres, is held by three yearly tenants, at rents amounting to £180 a year, or fifteen shillings per acre. Each tenant's farm contains about eighty acres, and his rent is £60 a year. A portion of each farm consists of reclaimable bog and mountain land. The residue is in an exhausted state. There are no valuable buildings upon the farms, or

improvements of any sort. Although the nominal rental, for the last twenty years, has been £180 a year, the net annual receipts during that period have not averaged one-half of that amount; after deducting the various losses sustained, through allowances out of the rents, arrears due by ejected tenants, and the costs of ejectments, distresses, and other proceedings taken to enforce the rent; besides the expenses, inconveniences, and legal risks to which the property has been exposed, through intricate family settlements of the estate.

The late landlord was tenant for life, and, upon his death, the present landlord became tenant in tail, subject to family charges amounting to £1,000. Proceedings in Equity have been taken to raise those charges, and the costs already amount to £300. The present landlord has gone through the process of barring his estate tail, and has

thereby constituted himself absolute owner in fee-simple, subject to the £1,000 charges, and £300 costs. He has in vain attempted to raise money at six per cent. interest, in order to discharge his liabilities; and, in these useless attempts, has incurred additional costs, to the extent of £200. He now requires at least £1,800, to clear the estate, and pay off some personal debts, caused by the embarrassed state of his affairs. The costs of the proceedings and his personal debts, must continue to increase, and his only alternative is to sell the property; but he finds that, in its present state, he cannot calculate on a higher price than twelve years' purchase of the nominal rental, or £2,160, out of which sum he will have to pay his own costs of the sale.

The three tenants cannot venture to improve their farms, which are not worth more than 10s. per acre, or £120 a year, in their present impoverished and unimproved state,

Each of the three tenants has a large family, constituting a valuable capital, which lies wholly unemployed, for want of a secure and permanent investment. This idle capital might be usefully occupied, in reclaiming and improving the land ; the value of which could thus be raised, in a short period, to 25*s.* per acre, or £300 a year. After many years of unremitting labor, and through an improved cultivation, its yearly value would be still further increased, probably to £500 a year.

The foregoing instance is a familiar and fair example of the actual condition of many properties in Ireland. In substance, it will apply also to some English estates.

Upon the creation of the New Land System, the owner of the above townland, and his three tenants, plainly see that it is for their mutual interest to adopt that system. They agree together, that the annual value

shall be fixed at the rent of £150 a year, and that the price of this rent shall be taken at twenty-five* years' purchase, being £3,750, or £1,250 for each tenant's farm. Of this sum, the tenants arrange to make up, in equal proportions, £750 amongst themselves and their friends; and agree, either to pay that sum to their landlord, or to lodge it in the Bank of the Land Tribunal, for the benefit of all persons interested in the property. The remaining sum of £3,000 is to be charged on the land, in the form of one hundred and twenty Land Certificates, of £25 each, payable to the Land Tribunal, and authenticated by its judicial signature or seal.

Under these circumstances, the landlord and his tenants present a written proposal to the Land Tribunal, stating their desire to adopt the New Land System. The Tribunal then makes a map of the townland, values

* See NOTE VIII.—'Small Estates,'—*post*, p. 240.

it at £120 a year, and finds that the landlord is absolute owner, subject to the family charges and attendant costs, amounting to £1,300—independent of the additional sum of £500, which the landlord will require to discharge his other liabilities. The Land Tribunal thereupon prepares forty-eight First Class Land Certificates, for £25 each, amounting to £1,200; of which sum £400, or sixteen Certificates, are charged upon each tenant's farm. These First Class Certificates are made payable at remote dates, not exceeding ten years from their creation. In the meantime they bear four per cent. interest, payable half-yearly, on every 1st of January and 1st of July.

The sum of £750, lodged by the occupiers to the credit of the Land Tribunal, is applied towards payment of the above sum of £1,300. The residue of that sum, £550, is paid off by the Land Tribunal, who endorse to third

persons a sufficient amount of the First Class Certificates, charged upon the land. The remaining First Class Certificates, amounting to £650, are endorsed by the Land Tribunal to the owner, who can transfer a sufficient number to discharge his other liabilities, and may use the other First Class Certificates at any time as ready money, or may retain them in his own possession, and receive the accruing interest.

It may be anticipated, that such First Class Certificates, secured as first charges upon the land, bearing four per cent. interest for a fixed term, and transferable by simple delivery, without expense or delay, will be regarded as most eligible investments for money. The consequence will be, that the holders of these First Class Certificates can either dispose of them at a premium, or can obtain advances upon them at a very low rate of interest, by depositing them with

bankers or other capitalists requiring temporary investments for their unemployed funds.

It may also be fairly expected that, in ordinary times, forty-eight First Class Certificates, amounting to £1,200, bearing four per cent. interest, and having ten years to run, can be disposed of for at least £1,300; or that money can be raised upon a deposit of them, at a rate of interest not exceeding three per cent. Thus, in the one case, giving to the owner a clear profit of £100; and, in the other case, enabling him, not only to obtain a temporary use of the entire amount of the Certificates, but also to retain for himself, out of the yearly interest, an annual profit of £12.

That portion of the £3,750, which remains after deducting the above sums of £750 and £1,200, will be converted into seventy-two Second Class Land Certificates, for £25

each, amounting to £1,800; of which sum £600, or twenty-four Second Class Certificates, will be charged on each tenant's farm, in addition to the sixteen First Class Certificates also charged on his farm. These Second Class Certificates bear four per cent. interest, payable on every 1st of January and 1st of July; and any of them may be paid off by the occupier upon either of those sale days, after giving six months' previous notice to the Land Tribunal.

The Second Class Certificates remain in the custody of the Land Tribunal, and the absolute owner is entitled to have them specially endorsed to any third persons, to whom, however, they will not be delivered; but each endorsee of a Second Class Certificate, can have it again endorsed at any time by the Land Tribunal. The owner is thus entitled, through a judicial endorsement of the Second Class Certificates, to obtain additional advances, either of a per-

manent or of a temporary character; but the terms will not be so advantageous as upon a transfer of First Class Certificates.

Notwithstanding the past years of depression, which have diminished the surplus funds of all Irish farmers, there still remain some who possess small capitals, which they would willingly devote to the purchase of their holdings. Under an improved Land System, and in better times, their means to purchase would rapidly increase, and they would soon be able to pay down substantial portions of the sums agreed upon as the selling prices of their farms.

Those who are familiar with the frugal habits of the Irish tenant-farmer, with his acquisitive qualities, and natural passion for land, will readily admit that no purchaser, or British settler in Ireland, can compete with him, in the high price he will be willing and

able to give for the purchase of his own farm ; provided he shall be allowed to pay for it by convenient instalments, according as he may have saved a small sum to effect that object.*

The above instance does not over-state the price which an Irish tenant would be disposed to pay for his farm, in the shape of Land Certificates ; although far beyond the amount of purchase money, that could be obtained in any other form.

Under the New Land System the occupier of each farm will have a permanent interest in his land, so long as he may continue to pay the interest upon the Land Certificates. He will have the power to pay off any one or more of the Second Class Certificates upon any gale day, on giving six months' notice to the Land Tribunal ; and after having paid off all the Second Class

* See NOTE X.—'British Settlers, Irish Tenants,'—*post*, p. 259.

Certificates, he may then pay off the First Class Certificates, according as they shall arrive at maturity.

Upon becoming the absolute owner, as well as the occupier of his farm, he will be entitled to have it re-valued by the Land Tribunal; and to obtain from the Tribunal First Class Certificates, charged upon his land, to an extent not exceeding ten times the amount of its improved yearly value. These Certificates will be the only charges upon the land, and he may use them for his ordinary purposes as ready money.

He may also at any time transfer his land to a new purchaser, by a simple entry in the books of the Land Tribunal; either for a sum of money, or for a corresponding amount of First and Second Class Land Certificates, to be charged on the land.

These Certificates he may retain as his own property, or may transfer them in the manner described.

He will feel assured that whatever amount of additional value he may impart to his farm will not only become his own permanent property, but will also be available like floating capital at any moment.

It may be expected that by the above means the owner, after applying a sum of £1,800 to pay off all the charges and his personal debts, will still have in his own possession Land Certificates to the value of about £2,000; and may either dispose of them for that sum, or continue to receive a well-secured income of £80 a year, which he can calculate will be paid half-yearly, on the very gale days fixed for its payment.

Were the owner to sell this property under the present system of Land Tenure, it is probable that he would not have £200 in his pocket, after paying the £1,800 and the expenses of the sale.

From the above example of the probable operation of the New Land System, an idea may be formed of the great advantages which it would confer upon the owner of such an estate, and of the motives of self-interest which would induce, and almost compel him to adopt it.

The advantages to each of the three occupiers would be equally great.

It is conceived to be no exaggeration to assert, that under the New Land System the value of land would soon become fully doubled to the owner, and also to the occupier, and more than quadrupled as constituting a portion of the general riches of the state. This proposition may appear startling, and it is of course impossible, *a priori*, to demonstrate its absolute truth. But those landlords and tenants may feel not incredulous who have already had much experience in the present Land System, and who,

from their dear-bought knowledge of the past, are able to make out a debtor and creditor account between the small profits to be derived out of their unimproved land, and the numberless 'losses, costs, damages, expenses, and outgoings, certain, and uncertain, probable, possible, and contingent,' which are inseparable from the existing tenures.

Without indulging in the supposition, that after centuries of degradation and consequent infertility, Ireland would at once resume her position amongst the Islands of the Blest, and become again a Garden of the Hesperides, there can be no doubt, that along with the introduction of an improved Land System, enabling the occupier to acquire a permanent and simple estate in the land, would commence an era exhibiting a prodigious increase in the productive powers of the soil of Ireland.

Those who may feel sceptical upon this subject, will find in all directions around them, numerous instances of the marvellous fertility which a continued application of labor and capital, on the part of the fee-simple owner, have imparted to inferior land, and of the utter exhaustion to which the rack-rent tenant from year to year has reduced superior soils. From every part of Ireland, and from every quarter of the globe, examples might be accumulated of the evil effects always resulting from any Land Tenure which is perplexed or precarious in its nature, and of the advantages likely to ensue from rendering the estate in the land simple and secure. In other words, from an easy mode of transferring the property in the land, and from a perpetuity of estate or tenure.

CHAPTER XX.

FEUDAL TENURES.

It will have been observed, that the plan called the Improved Land Tenure, has been so framed as to admit of its being engrafted upon the existing Tenures of land in England or Ireland. The other plan, called the New Land System, can be conveniently adopted in any country, however different may be its present land system. An universal adoption of that New System, throughout England and Ireland, would extirpate from those countries the whole feudal tenures, 'both root and branch.' It is natural to expect, that many persons may object to abandon those ancient tenures, which they have been accustomed to regard as inseparable from land. With a

view to remove this objection, it will be useful to mention shortly the origin and nature of Feudal Tenures.

It was a leading principle of policy with the Norman race, to consolidate their conquests by wholesale confiscations, and to sustain those conquests by a military system of Feudal Tenures. Large tracts of land were allotted by the victorious general to the superior officers of his army, and by them distributed amongst the inferior officers and soldiers. These military landowners found it necessary to suffer some of the subdued population to remain in occupation, as tillers of the soil.*

In the 11th century, when the Normans had completed the conquest of England, they prepared the Domesday Book,† dispossessed

* Wright's Law of Tenures, p. 7:—Blackst. Comm., Vol. II., chap. 4.

† The *Red Book of the Exchequer* states, that the Domesday Book of England was commenced for King William the Conqueror in 1080, and completed in 1086.

many Saxon proprietors, and established feudal tenures throughout that land. Thereupon all the great lords and landowners in the kingdom were summoned to London and to Salisbury, to do their homage and swear their fealty to King William the Conqueror,

The Norman writer of '*Dialogus de Scaccario*' (Lib. i., cap. xvi.) states, that:—"The native population called this Book, *Domes Dei*; by a metaphor from the day of Judgment. By us it is called, *Liber Judicarium*."

The *Saxon Chronicle*, (p. 186,) adds: "So carefully did the Norman Conqueror cause the whole country to be examined, that there was no townland, or spot of ground, nor even an ox, or a cow, or a pig omitted from his census."

Hearne's Discourses, (preface, p. 122), mention, that—"This most admirable survey was done with such an exactness, and so much diligence, as would be hardly credible, were it not certain that the Normans resolved to make the best use of their conquest, and to secure every inch of ground for themselves."

The historian Alison, (*History of Europe*, Vol. I., p. 63, Ed. 1849), narrates, that—"Almost the whole property of England, was in a few years confiscated. The ancient Saxon proprietor, was reduced to the rank of a serf on his paternal estate; and he nourished, in the meanest employments, an inextinguishable hatred to his oppressor." See also Thierry's *History of the Norman Conquest*, *passim*.

and in return to receive grants of land, to be held by them according to feudal tenures.*

In a royal charter, promulgated by that monarch he declared:—"We ordain and
"command that all earls, barons, knights, and
"esquires, and all free men of our entire
"realm of England, shall always have and
"hold themselves well equipped, in arms and
"in horses, as is becoming and necessary; and
"that they shall always be prompt and pre-
"pared to perform their full services to us,
"whenever need shall require; according to
"what they of right owe to us from their
"feuds and tenements, and as we have or-
"dained to them through the common council
"of our entire kingdom, and have given and
"granted to hold to them in feuds, with he-
"reditary right."†

It thus came to pass that there was no

* Wright's Law of Tenures, p. 52.

† Spelman on Feuds, chap. 27. Reeves's Hist. of English Law, ch. 2. Hale's Comm. Law, ch. 11.

land in England in the hands of any subject, but it was holden of some lord by some kind of service.*

In the 12th and the succeeding centuries, according as the Normans proceeded with their conquest of Ireland, they dispossessed the old Irish proprietors and extended their feudal tenures to that island. The various confiscations of Saxon or of Celtic properties in England or in Ireland, were from time to time completed by compulsory surrenders, royal charters and inquisitions, and other legal forms. According as these confiscations proceeded, the feudal tenures were introduced. The present system of land tenure, in both Ireland and England—with its dependent relationship of head landlord, middleman, and occupying tenant—is but a modified continuation of the old feudal system—with its sovereign lord, lord paramount, and liege

* Co. Litt. 65, a.

lord, its tenant in capite, tenant in mesnalty, and tenant paravale. If the great landowner, or tenant in capite, has now become the lord paramount, and been released from his former state of feudal subjection to his sovereign lord, the condition of the occupying tenant of the present day is but little superior to that of the tenant paravale in former times.

In England, for some centuries subsequent to the Norman conquest, the 'gentle' Norman was the lord or landlord, and the Saxon 'churl' his vassal tenant of the soil. Happily for England, the lines of demarcation between hostile races became effaced, when they were both 'brayed as in a mortar'* during its civil wars.

In Ireland the Norman soldiery, and afterwards the Anglo-Saxon adventurers, were the landlords, and the ancient Irish inhabitants became occupying tenants of the confiscated

* Sir J. Davis.

land. Unhappily for Ireland, these adverse distinctions are still continued; and religious animosities are superadded to the ancient antipathies of race.

Antecedent to the Norman invasions, the land systems in England and in Ireland had been essentially different from the tenures then introduced. It is unnecessary at present to inquire how far allodial* estates, which conferred an absolute property in the land free from any tenure under a superior lord, may have belonged to those Teutonic nations, or to those more ancient Celtic tribes, which had formerly occupied the greater part of western Europe and the British Isles, and were in many places overrun by the advancing tides of Norman invasion. It will suffice to know, that a military system of feudal tenures

* As to allodial property, see Spelman on Feuds, ch. 1; Co. Litt., 65, a. Harg. n. (1); 1 Th. Co. Litt., p. 243, n. (1); Sir John Sinclair's Report of Scotland, Vol. I., p. 90,—Article by W. Thom.

constituted the land system of those Northern or Norman races, whose occupation was war, with conquest for its object.

The policy of that military land system was to fix deep in the land the permanent ownership of its lord, and to leave loose upon the surface the tenant's permissive occupation of the soil.* This policy was effected as to the landlord, by those complicated limitations and restrictions, which, though slightly modified in more modern times, still exercise a strong influence in preventing alienations of the ownership of land. The policy was also carried out as to the tenant, by a system of tenures which, up to the present day, render his occupation uncertain, by placing him more

* "The feudal system was subject to the fatal defect, that it made no provision for the interests or welfare of the inferior classes. It was an institution suited only to a barbarous age; and alike incapable of being moulded according to the changes which society undergoes, or of providing for the freedom of civilized times." Alison's *Hist. of Europe*, Vol. I., pp. 23, 29.—Ed. 1849.

or less at the mercy of his landlord. It has been the object of these pages to show, that it would benefit both landlord and tenant, as well as the state, to reverse the whole of this ancient policy, by enabling the tenant to acquire a permanent interest in the land, and the landlord an easy mode of transferring its ownership.

But before public opinion can be sufficiently matured to retrace that policy, it must abandon prejudices whose remote origin recedes into the distance of those medieval times, when a military system required that the vassal should continue dependent upon his lord, and that the beneficial ownership of large tracts of country should remain inviolate in the line and blood of the military chief. His military followers cultivated portions of the land, and occupied the precarious relationship of retainers and villeins towards their feudal lord. In after times, and according

as the armies of England were paid by the crown, or out of taxes supplied by the state, the relationship between the lord and his vassal was converted into that of the landlord and his tenant; a position perhaps less degrading to the free-born Briton, but scarce less dependent or insecure.*

Now that standing armies are established, and that all use of the ancient military tenures is at an end, the abuse should also cease; and those tenures should be superseded by a New Land System, better adapted to increase the value of the land, the prosperity of all classes, and the general welfare of the Empire.

* ‘*Seigneur de paille, vaut Vassal d’acier* ;’—was an ancient adage in feudal France. See Cotgrave’s French and English Dictionary.—A.D. 1610.

‘A Landlord of straw, can break a Tenant of steel ;’ is a well-known saying in modern Ireland.

N O T E S.

1. The first part of the document is a list of names and addresses of the members of the committee.

2.

3. The second part of the document is a list of names and addresses of the members of the committee.

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6. The third part of the document is a list of names and addresses of the members of the committee.

NOTE I.

THE LAND AND PEOPLE OF IRELAND.*

THE following are a few of the numerous testimonies, to the natural fertility of the soil of Ireland, which have at various times been borne by competent English judges, some of whom had received large grants of its confiscated lands:—

“ Assuredly the commodities of the country, are many more than either the people can well use, or I recite. Their soil for the most part is very fertile, and apt for wheat, rye, barley, peas, beans, oats, wood, mather, rape, hops, hemp, flax, and all other grains and fruit, that England any wise doth yield.”†

“ Ireland is remarkable for the good temperature of the air; the fruitfulness of the soil; the pleasant and commodious seats for habitation; the safe and large ports and havens lying open for traffic unto all the west parts of the world; the long inlets of many navigable

* See page 3, *ante*.

† ‘Brief Description of Ireland,’ printed in 1590, and reprinted in 1840. It was written in 1589, by Robert Payne, who was then acting as the Irish agent of twenty-five Englishmen, for each of whom he had obtained 400 acres of land in the County of Cork, being parts of the great Desmond forfeitures, in the reign of Elizabeth. He was an English agriculturist, who had written a work on irrigation and drainage, published in 1583.

rivers, and so many great lakes and fresh ponds within the land, as the like are not to be seen in any part of Europe; the rich fishings, and wild fowl of all kinds; and, lastly, the minds and bodies of the people endued with extraordinary abilities of nature."*

"And sure it is yet a most beautiful and sweet country, as any is under Heaven; being stored throughout with many goodly rivers, replenished with all sorts of fish most abundantly; sprinkled with many very sweet islands and goodly lakes, like little inland seas, that will carry even shippes upon their waters; adorned with goodly woods, even fit for building of houses and shippes, so commodiously, as that if some Princes in the world had them, they would soon hope to be lords of all the seas, and ere long of all the world; also full of very good ports and havens opening upon England, as inviting us to come unto them, to see what excellent commodities that country can afford; besides the soil itself most fertile, fit to yield all kind of fruit that shall be committed thereunto. And lastly, the Heavens most mild and temperate, though somewhat more moist in the parts towards the west."†

* Davis's 'Discovery, &c.,' p. 1. This description of the land and people of Ireland was given by Sir John Davis, Attorney-General to James I., and who had obtained grants of 4,000 acres of land in Ulster, out of the great O'Neill forfeitures. See Harris's 'Hibernica,' pp. 162, 199, 221.

† 'View of Ireland,' written in 1596, by Edmund Spenser, who had been Secretary to the Lord Deputy of Ireland, and had received a grant of 3,000 acres of forfeited lands in the County of Cork, where he resided for some years, and wrote his celebrated poem, 'The Fairy Queen.'

“If the land of Ireland were put once in order, it would be none other than a very paradise, delicious of all plesaunce, in respect and regard of any other land in this world. Inasmuch as there was never stranger or alien person, great or small, who would avoid therefrom by his will, notwithstanding the disorder, if he might have the means to dwell therein. How much more would be his desire to dwell therein, if the land were once put in order.”*

The soil of Ireland was thus described by a celebrated English Agriculturist, who visited the country from 1776 to 1779:—

“In proportion to the size of the two countries, Ireland is more cultivated than England, having much less waste lands of all sorts. Natural fertility, acre for acre, over the two kingdoms, is certainly in favor of Ireland. The rocks are clothed with verdure. Those of limestone, with only a thin covering of mould, have the softest and most beautiful turf imaginable.”†

Treating of those fertile districts, where ‘the famous Golden Vale‡ of Limerick and Tipperary spreads a rich level to the eye,’ he states:—

“It is dry sound land, and would do for turnips exceedingly well; for carrots, for cabbages, and in a word, for everything. I think, upon the whole, it is the richest soil I ever saw, and such as is applicable to every purpose you may wish. It will fat the largest bullock, and at the same time do equally well for sheep, for

* ‘State Paper,’ addressed to King Henry VIII., about the year 1515; published in 1834 with the English State Papers, Vol. II., part iii., p. 31.

† A. Young’s ‘Tour in Ireland,’ Vol. II., part ii., p. 3.

‡ See *post*, p. 238, n.

tillage, for turnips, for wheat, for beans, and for every crop and circumstance of profitable husbandry.”*

The same writer thus describes the natural qualities of an extensive property in the south of Ireland, the management of which he had superintended, during a period of twelve months, for its then proprietor Lord Kingsborough:—

“This vast property extends from Kildorrery to Clogheen, beyond Ballyporeen, a line of more than sixteen Irish miles; and it spreads in breadth from five to ten miles. There are tracts of such incomparable land, that I have seen very little equal to it, except in Tipperary, Limerick, and Roscommon. A deep friable loam, moist enough for the spontaneous growth to fat a bullock, and dry enough to be perfectly under command in tillage. If I were to name the characteristics of an excellent soil, I should say *that* upon which you may fat an ox, and feed off a crop of turnips. I recollect little or no such land in England. Yet it is not uncommon in Ireland.”†

* A. Young's 'Tour in Ireland,' Vol. II., part i., pp. 143-4.

† *Ibid*, pp. 270-1.—‘This vast property,’ containing about 75,000 acres, is now (June, 1851) advertised for sale in the Irish Incumbered Estates Court. It lies in ‘a ring fence,’ and comprises portions of the adjoining counties of Cork, Tipperary, and Limerick. The titles to it are derived under different royal grants, from Elizabeth, James I., and Charles II., to the ancestors of the present Earl of Kingston, and to Sir W. Fenton of Mitchelstown, whose daughter and heiress had married John Baron Kingston, before the year 1621. The Kingston family claim the ancient title of the ‘White Knight’ through the same

The following is a more modern description of the land and people of Ireland, given by another English writer, of some celebrity:—

“According to received theories, Ireland ought to be very prosperous. She is a very large and eminently fertile island, in a temperate latitude. She has safe and capacious harbors, noble rivers, immense water-power. She possesses great mineral wealth, of every description. In spite of calumnious assertions to the contrary, her poor, when employed and fed, are the most laborious of mankind. Is Irish human nature different from other human nature? Are not the most laborious of all laborers in London and New York, Irishmen? Are Irishmen inferior in understanding? We Englishmen, who have personally known Irishmen in the army, at the bar, in the church, at college, know that there is no better head than a disciplined Irish one.

“But what is the condition of Ireland? No description can describe it. No parallel exists, or has ever existed to illustrate it. No province of the Roman empire ever presented half the wretchedness of Ireland. At this day, the mutilated Fellah of Egypt, the savage Hottentot, and New Hollander, the negro slave, the live chattel of Carolina or Cuba, enjoy a paradise in comparison with the condition of the Irish peasant—that is to say, of the bulk of the Irish nation.

“Who is responsible? Common sense says, and all

Sir W. Fenton, who married the heiress of Edmund Fitzgibbon or Fitzgerald, the last of the White Knights. The estates of the White Knight were confiscated in 1571 by the Act of 13 Eliz., c. 3, Ir.—See Lodge's ‘Peerage of Ireland,’ Vol. III., p. 218; and 15th Report of Irish Record Commissioners, pp. 122, 204.

Europe and America repeat it:—Those who have governed Ireland are responsible.

“The misery of Ireland is not from the human nature that grows there. It is from England’s perverse legislation, past and present. The truth is, that, except in the imperfect way that the peace has been kept, Ireland has not been governed at all.”*

Another recent English writer, of great research, has thus expressed his views respecting Ireland:—

“Ireland is splendidly situated, commanding the direct course between Northern Europe and America, with some of the finest harbors in the world. Its soil is proverbially rich and fruitful, and has won for it throughout the world the appellation of the ‘Emerald Isle.’ Its rivers are numerous, large, and well adapted for internal commerce. Its people are, physically and intellectually considered, one of the most active and restless in the world.

“Send the Irishman to Australia, to the States, or to any English colony, where he can make himself, by industry, a proprietor of land, and where he is not shackled by middle-age legislation, and he becomes immediately the most energetic and conservative of colonists. He there acquires, faster than any one else; he effects more in a day than any one else; he is more untiring in his perseverance than any one else; and he forces his rulers to write over to England—as the Governor of South Australia did a few years ago—that the Irish are the most enterprising, successful, and orderly of all the colonists of those distant lands.”

* ‘Sophisms of Free Trade,’ (1850):—commonly ascribed to Sergeant Byles, a distinguished member of the English Bar.

"In every colony in our empire, and among the motley multitudes of the United States, the Irish are distinguished by their energy, their industry, and their success. They are industrious and successful everywhere but in Ireland.

"But nearly one-third of this Irish island is wholly uncultivated, and is nothing more than bogs, moors, and waste lands. The cultivation of the remaining portion is generally of the most miserable kind.

"At this moment there is a state of war in Ireland. Do not let us disguise it from ourselves. There is a war between landlord and tenant; a war as fierce, as relentless, as though it were carried on by force of arms.

"Such is the frightful, the appalling result of our long government of Ireland. We have made it—I speak it deliberately—we have made it the most degraded and the most miserable country in the world; and we wonder that the Irish should rebel against such a system of misgovernment! All the world cries shame upon us; but we are equally callous to our ignominy and to the results of our misgovernment."*

It would be easy to accumulate additional evidence, ancient as well as modern, from even English lips, to establish, beyond any controversy, the natural excellences of the land and people of Ireland.

* 'Social Condition of the People of England and Europe,' (1850); by Joseph Kay, who, in his capacity of Travelling Bachelor of Cambridge University, had occupied a period of eight years, in examining the comparative conditions of the United Kingdom and of the several countries in western Europe.

NOTE II.

IRISH TITHE RENT-CHARGE.*

THE inferiority of legislation for Ireland, as contrasted with that for England, is remarkably apparent in the matter of tithe rent-charge. The superior simplicity of the English machinery for varying the amount of that impost, according to the rise or fall in the prices of corn, has been already explained. The superior character of the English mode of ascertaining the average prices, will appear from the following statements.

Under the English Tithe-commutation Act,† tithe rent-charges are varied every year, by reference to the average prices of wheat, barley, and oats, for the seven years next preceding; founded upon official returns, obtained from two hundred and ninety of the principal market towns in England and Wales, and not upon London prices only.

* See page 17, *ante*.

† 6, 7 Will. IV., c. 71; and see 9 Geo. IV., c. 60; and 5, 6 Vict., c. 14.

But under the Irish Tithe-composition Acts,* tithe rent-charges in Ireland are variable in each seventh year, by reference to the average prices of wheat or of oats, for the preceding seven years, as stated in the *Dublin Gazette*, which gives returns taken from the Dublin market only, and not from any of the country towns.

Even were a most accurate return obtained, of the average prices of all corn sold in Dublin, it would furnish but a very imperfect criterion, to regulate the country parts of Ireland. But it plainly appears, from the subjoined evidence, that the average price of corn, as stated in the *Dublin Gazette*, does not truly represent the average price of all corn sold in Dublin alone. It also appears, that since the introduction of free trade, the averages stated in the *Dublin Gazette* have been based, chiefly upon prices paid in the Dublin market for large quantities of choice foreign corn; and that the *Gazette* either does not give, or wholly misstates, the price of Irish corn. The indirect mischiefs, effected by thus unduly overstating the average price of corn, were much increased by the Dublin returns of 1850, in which year most of the wheat grown in Ireland was of a damaged and very inferior character.

* 4 Geo. IV., c. 99, ss. 25, 43; 5 Geo. IV., c. 63, s. 24.

The following valuable evidence, given in the year 1845, before the Irish Land Commissioners, exhibits in the clearest form, the public injustice inflicted by this system of Dublin corn averages:—

“ I would suggest to the Commissioners, that there should be a strict average taken of corn. It is really a shame to say, that in the city of Dublin, which regulates all Ireland, there is no correct average taken. The average taken in Dublin regulates the tithe composition, and the ecclesiastical leases by septennial series; and yet the taking of these averages is not upon any fixed data whatsoever. There is a clerk of the market, who has no power to compel the factors to return the quantities.

“ I was concerned in a case about the average of the tithes. I went down to the market about five or six years ago, to get the averages from the clerk who had taken them. He wanted to charge me ten guineas for them. Whilst I was there a person came up and gave him a slip of paper. What is that? I said to the clerk. He replied: 360 barrels of wheat that gentleman sold to-day. I said, I know that gentleman, and he never sold a barrel of wheat in his life. Is that the way in which you take the average? Yes, said he; we take it from any one who comes in; it is a voluntary average.

“ The result is this:—I have obtained from Mr. Roe, the extensive distiller, the average prices which he paid for wheat in the public markets in the years 1837, 1838, and 1839; that is, for wheat grown in this country, out of which the rent has been paid. That average does not amount to more than 24s.; and this is corroborated for the years 1839, and 1840, by the average price of wheat which I have got from another eminent distiller.

“ I had made out a book of the averages for several years from the *Gazette*, which I presented to the Attorneys' Society of Ireland, and they have since kept it up; and by reference to that book, I find the average price of wheat in Dublin for 1839-1840, as it appeared in the *Gazette*, was for that period £1 18s. I mean for 1839-1840, which was the great year for malted wheat.

“ Hence it is that a party would say, in the case of an estate set thirty years ago;—When I set my land, the average was 35s. a barrel for wheat; what right have you to ask for the rent to be cheaper now, when I find the average £1 18s., given in Dublin for the year 1839-1840? And the fact was, this was the average price of the foreign corn that was imported; but the average price of the Irish corn, in that year, never went into the account of the averages at all. It was all bought up by the distillers, at from 17s., the lowest, to 26s., the highest.

“ In the case of a friend of mine, who wanted to renew a lease from a noble English proprietor in Ireland, he met him by the position I have just put. His lordship said—You claim so and so. When your father got a lease of this land, the average appears by the *Dublin Evening Post* to have been so and so. I have turned to it, and I find the average by the same paper to be the same now. How can you say I ought to let the land cheaper now? I cannot do it.

“ And here are the false data which regulate the tithes and ecclesiastical leases. It is really shameful; and if the commissioners do nothing but have a correct average taken, it will be a great thing.

“ I have kept the exact averages for the last ten years. I have taken them for tithe purposes. I took them

originally to prove at a trial, and have kept them since. I can give Mr. Roe's averages, or he can give them himself. The distillers and starch manufacturers bought almost all the wheat grown in Ireland in the harvest of 1839; and yet the Irish landholders scarcely get commiseration when their all is destroyed by the weather, or sold at a ruinous price, and which ruinous price would be apparent if a correct average of corn was kept.

"There is no way by which to compel a party to give a correct average. The factors ought to be bound to state their prices, and to make their weekly returns, under the obligation of an oath. There should be correct averages taken, either in the counties or in the principal cities.

"I aver from all the information I have had upon this matter, and I have made strict inquiry, that at the period of the damaged wheat at market, none of it was included in the *Gazette* averages, and that a considerable portion of the corn sold at the Corn Exchange, is frequently not returned to the clerk who takes the averages. It is a complete voluntary matter, to make the return or not by the factors." *

It would be quite superfluous to add any observations, to the foregoing plain exposure of the mischievous character of these Dublin corn averages, which should regulate the amount of tithe rent-charges and ecclesiastical rents throughout Ireland.

* Devon Commission Reports, Vol. III., page 881, No. 1094, Evidence of William Ford, Esq., Solicitor; Town Clerk of the City of Dublin.

The numerous difficulties, which appear to surround any attempt to amend the present mode of varying tithe rent-charge in Ireland, and the other objections* to that system, would seem to suggest the propriety of adopting a more simple substitute, by means of some new arrangement, which would be satisfactory and at the same time strictly just towards all parties.

A fair mode of effecting an arrangement would be, to re-adjust the amount of each tithe rent-charge throughout Ireland, with reference to the fall in prices and to poor rate deductions, and then to sanction its redemption at a fair rate of purchase, to be paid either in money or in land debentures.

* The leading objections to a continuance of tithe rent-charge in Ireland, are of too obvious a character to require explanation. Amongst other practical evils arising from that impost, it has the effect of preventing members of the Society of Friends—a body which has manifested a deep interest in the Irish Land Question—from becoming the owners of land in Ireland. They are not debarred from being owners of land in England, where the tithe rent-charge is not a personal debt, but is charged on the land alone; and is therefore paid, not by the landlord, but by his occupying tenants. The mode of proceeding for enforcing payment of any Irish tithe rent-charge due by Quakers, either by distress on their goods or a receiver over their rents, is regulated by the Acts of 7 Geo. III., c. 21, s. 11, Ir.; 54 Geo. III., c. 68, s. 6; 5, 6 Will. IV., c. 74; 1, 2 Vict., c. 109, s. 31.

In the case of a lay impropiator, the purchase-money could be paid over to him. In the cases of ecclesiastical persons, the life incomes of all present incumbents could be fully provided for out of the purchase-monies ; and the surplus could be invested and applied as Parliament may hereafter direct.

This mode of settlement would do no injustice. It would benefit all the parties interested in tithe rent-charges, and remove existing difficulties. It appears to have been the mode of settlement contemplated by the statute, called 'Lord Stanley's Act,' which was passed in order "to provide for the establishing of tithe composition in Ireland, and to make such compositions permanent." By that statute it was enacted, that "all tithe compositions in Ireland shall remain and endure for ever, or until the same shall be redeemed or extinguished in such manner as Parliament may hereafter prescribe and appoint."*

* 2, 3 Will. IV., c. 119, s. 6.

NOTE III.

CONFISCATIONS IN IRELAND.*

It has been observed, by high authority, that a knowledge of the past confiscations of Ireland, and of the manner in which its landed property has been dealt with for a long series of years, is important to a clear understanding of the sources from which many of its present evils have sprung.†

Previous to the reign of Henry VIII., the king's Irish territory had gradually become narrowed, within the very limited district composed of one moiety of each of the five small counties, called Uriel (now Louth), Meath, Dublin, Kildare, and Wexford.‡ The only confiscations, that still exercise a sensible influence upon the present land tenure and social state of Ireland, are those which have taken place subsequent to that monarch's reign.

Of these more modern confiscations, the principal

* See page 22, *ante*.

† Devon Commission Reports; Vol. I., pp. 6, 7.

‡ English State Papers, Vol. II., part iii., p. 8.

were—of the King's and Queen's County, under Philip and Mary; of four counties in the province of Munster—Cork, Kerry, Limerick, and Waterford, called the Desmond forfeitures—under Elizabeth; of six counties in Ulster—Armagh, Tyrone, Coleraine (now Derry), Donegal, Fermanagh, and Cavan, called the O'Neill forfeitures, or the Ulster Plantation—under James I.; of Tipperary, and other extensive territories in Munster, Leinster, and Ulster, during the Protectorate of Cromwell; and of additional lands throughout Ireland, in the reigns of William III.* and Anne. There were some

* The prodigal donations of Irish forfeited estates, made by William III. to his favorites, and to foreigners, created so much discontent amongst other disappointed expectants, that a commission of inquiry was appointed by the English House of Commons. In the report of the Commissioners, dated the 15th of December, 1699, were specified seventy-six royal grants, which had passed the great seal, after the battle of the Boyne. The following are eight of those grants:—

135,820 acres to	Lord Woodstock	(van Bentinck).
108,633	„	Earl of Albermarle (van Keppel).
95,649	„	Countess of Orkney (Miss Elizabeth Villiers).
49,517	„	Lord Romney (Sidney).
39,871	„	Earl of Rochfort (de Zulestein).
36,148	„	Earl of Galway (de Ruigny).
30,512	„	Marquis de Puizar
26,480	„	Earl of Athlone (de Ginkle).

522,630 acres.

The matters stated in the report led to the passing of the English

further confiscations effected in the reigns of Anne and of George I., II., III., through the machinery of the Penal Laws. With reference to those various confiscations and forfeitures, it would be useful to give a true chronological history—such as has never yet been written—derived only from public Acts of Parliament,* State Papers, the cotemporaneous statements of official persons, and other unerring sources of information.†

For the present, however, it will suffice to mention a few circumstances connected with one of those confiscations, in order to exhibit the spirit in which they were all matured and carried out.

‘Act of Resumption’ (11 & 12 Will. III., c. 2, Engl.—A. D. 1700); which avoided all royal grants of land in Ireland, made after the 13th of February, 1688, and directed an absolute sale of all Irish estates which had belonged to James II. or his adherents.

* See Table No. 1, *post*, p. 224, for references to the principal statutes, by which Irish lands were confiscated, subsequent to the reign of Henry VIII.

† See a parallel Table, No. 2, *post*, p. 225, for references to some accessible sources of authentic information, respecting those various confiscations. Other information might be found, either in the Government depositories of original State Papers, or in works dispersed through Continental libraries. There are also many valuable MSS. and documents relating to the subject, in the libraries of the Royal Irish Academy, Royal Dublin Society, King’s Inns, and Trinity College, Dublin, and in the British Museum.

Some inadequate idea, of the true character of the confiscation which took place during the Protectorate of Cromwell, may be formed from the following Order in Council:— *

“Whereas Mr. Henry Paris, late one of the Commissioners of Revenue at Clonmel, hath informed us that the transplantacion hath been so effectually carried on in the county of Tipperary, and especially in the barony of Eliogarty, that no inhabitant of the Irish nacion, that knows the country, is left in that barony, which may be a great prejudice to the Commonwealth, for want of informacion of the bounds of the respective territories and lands therein, upon admeasurement;—It is therefore ordered, that it be referred to the Commissioners at Loughrea, to consider of four fit and knowing persons of the Irish nacion, lately removed out of that barony into Connaught, and to return them with their families to reside in or near their old habitacions, for the due informacion of the surveyors appointed, of the respective bounds of each parcel of land admeasurable, and to continue there till further order.

“Dublin, 20th December, 1654.

“THOMAS HERBERT,

“Clerk of the Council.”

Referring to the same confiscation, Sir William Petty, who conducted its details on the part of the Parliament of England, states as follows:—

“The people of Tipperary having more universally obeyed the orders for transplantation than other counties

* The original Order is in the State Paper Office, A. 5, in Ber-
mingham Tower, at Dublin Castle.

generally had done, that country became so uninhabited and waste, that it was impossible to find mearers to do the work tolerably well.”*

Those orders for transplantation are thus described by a coteremporary historian :—

“There was a large tract of land, even to the half of the province of Connaught, that was separated from the rest of Ireland by a long and large river, and which by the plague and many massacres remained almost desolate. Into this space and circuit of land they required all the Irish to retire by such a day, under the penalty of death; and all who should after that time be found in any other part of the kingdom, man, woman, or child, should be killed by any body who saw or met them.”†

Sir William Petty has calculated, that—

“About 504,000 of the Irish perished, and were wasted by the sword, plague, famine, hardship, and banishment, between the 23rd of October, 1641, and the same day in 1652. For whose blood some body should answer, both to God and the King.”‡

The same authority has computed, that upon a rough estimate, the quantity of land comprised in the confiscations of Elizabeth and James I. exceeded three millions of acres, and that those under Cromwell were of much greater extent.§

* Petty's MSS. History of his Down Survey, Vol. I., p. 79;—in the Library of the King's Inns, Dublin.

† Clarendon's Life, fo. 62;—Oxford Edition.

‡ Petty's Political Survey of Ireland, p. 19.—A.D. 1672.

§ *Ibid.* pp. 2, 3.

Notwithstanding these large transfers of Irish land to English colonists, this most competent judge of the subject states it as his deliberate opinion, that—

“England hath constantly lost, these five hundred years, by meddling with Ireland. And at this day (1672) when Ireland was never before so rich and splendid, it were for the advantage of the English, to abandon their whole interest in that country.” *

A principal object of Cromwell's confiscations was, to provide means for disbanding the parliamentary army, and for discharging their large arrears of pay. Those arrears were accordingly settled, by issuing a species of debenture, to be satisfied by a transfer of its equivalent in Irish confiscated land. These soldiers' land debentures were in the following form:—

“All lawful deductions made, there remaineth due from the Commonwealth to _____, his executors, administrators, and assigns, until the day of the date hereof, the sum of _____; which sum is to be satisfied out of the rebels' lands, houses, tenements, and hereditaments, in Ireland, in the disposal of the Commonwealth of England.

“Dated the _____ day of _____, 165—.”†

These debentures were issued during the years 1652–3; but owing to some delays in completely

* Petty's Political Survey, p. 28.

† Scobell's Acts and Ordinances, p. 202.

clearing the lands of their old Irish occupants, and in the preparation of proper surveys, an interval of about two years elapsed before the soldiers could be located in their new settlements.

During that interval—

“ *Anno* 1653, debentures were freely and openly sold for 4s. and 5s. per pound; and 20s. of debentures, one place with another, did purchase two acres of land. At which rate all the land of Ireland, if it were eight millions of profitable acres, might have been had for a million of money, which, *anno* 1641, was worth above eight millions.”*

Doctor Petty, afterwards Sir William Petty, arrived in Waterford in 1652, as physician to the army in Ireland. On the 11th of December, 1654, he obtained a contract from the government for admeasuring the forfeited lands intended for Cromwell's soldiers, at the rate of £7 3s. 4d. per thousand acres. By this contract he gained £9,000, and he afterwards got £900 more for a survey of the Adventurers' lands. Through these means, and his private savings, he realized about £13,000, with which sum he bought up soldiers' debentures, and acquired large portions of the forfeited lands intended for them. When subsequently accused of having obtained his vast estates through undue influences, he defended himself by explaining, as he

* Petty's Political Survey, p. 21.

afterwards stated in his will, that he had "raised about £13,000 in ready money at a time when, without art, interest, or authority, men bought as much land for 10s. in real money as in this year, 1685, yields 10s. per annum above quit rents." *

The Down Survey was completed within the year 1655, and the several regiments then cast lots as to the order of their being set down upon the soldiers' lands. Thereupon the surveyor-general proceeded to set them all down, regiment by regiment, troop by troop, and company by company, according to their order, without interval, and without picking or choosing. Where the lot of the first regiment ended, there the lot of the second regiment began. According as each regiment was set down, they gave up their debentures to the surveyor-general; and no further title-deed was required than the several regimental books, in which the lot of each soldier was specified.†

In order to confirm the titles of Cromwell's soldiers to their new estates, forced conveyances and releases were obtained from the former proprietors, who had been removed into Connaught.

* Petty's Tracts, preface p. v.; and his Will, *ibid*;—also Petty's Reflections, pp. 9, 10.

† Petty's History of his Down Survey; MSS. in the King's Inns Library, Dublin.

“What should they do? They could not be permitted to go out of this precinct to shift for themselves elsewhere; and without their assignments in Connaught, they must starve there, as many did die every day of famine. In this deplorable condition, and under this consternation, they found themselves obliged to accept or submit to the hardest conditions, and so signed such conveyances and releases as were prepared for them.” *

Notwithstanding this complete transplantation, of the old Irish inhabitants from the county of Tipperary in 1654, it was afterwards found expedient to suffer many of them to return to their ancient localities, as mere occupiers of the soil. Their descendants now constitute the occupying tenantry of that county, in a proportion exceeding twenty to one. The ownership of the land belongs to them, in less than the inverse ratio of one to twenty. To persons not familiarly acquainted with the county of Tipperary, it would be in vain to attempt to convey any adequate conception of the evils daily experienced by its inhabitants, arising from the unnatural state of its society and land tenure.†

* Clarendon's Life, fo. 62, Oxford Edition.

† For much interesting matter contained in this note, the writer is indebted to the kindness of John P. Prendergast, esq., and to his familiar knowledge of the past history of Ireland, as connected with its existing tenures.

TABLE NO. 1.

ACTS OF PARLIAMENT.

A.D. 1556.—3, 4 PHIL. & MAR. cc. 1, 2, Ir.
 Confiscate the countries of the O'Moores, O'Connors,
 and O'Dempseys; now King's and Queen's Counties.

A.D. 1569.—11 ELIZ. sess. 3, cc. 1, 3, Ir.
 Confiscate the countries of the O'Neill in Ulster, and
 the lands of the Knight of the Valley in Munster.

A.D. 1571.—13 ELIZ. c. 3, Ir.
 Confiscates the lands of the White Knight in Munster.

A.D. 1585.—27 ELIZ. c. 1, Ir.
 Confiscates the lands of Viscount Baltinglass and others.

A.D. 1586.—28 ELIZ. cc. 7, 8, Ir.
 Create the great Desmond forfeitures in Munster.

A.D. 1612.—11, 12, 13 JAC. I. c. 4, Ir.
 Confirms the O'Neill forfeitures and Ulster Plantation.

A.D. 1642.—16 CAR. I. c. 33, Engl.
 'Adventurers Act.'

A.D. 1653.—Sept. 27, c. 12. Commonwealth.
 'Soldiers Arrears Act.'

A.D. 1662.—14, 15 CAR. II. sess. 4, c. 2, Ir.
 'Act of Settlement.'

A.D. 1665.—17, 18 CAR. II. c. 2, Ir.
 'Act of Explanation.'

A.D. 1700.—11, 12 WILL. III. c. 2, Engl.
 'Act of Resumption.'

A.D. 1703.—1 ANN. st. 1, c. 32, Engl.
 'Forfeited Estates Act.'

A.D. 1703–1782.
 The confiscating portions of the Penal Code; from the
 disabling Acts of 2 Ann. c. 6, Ir., and 8 Ann. c. 3, Ir;
 to the enabling Act of 21, 22 Geo. III. c. 24, Ir.

TABLE NO. 2.

HISTORICAL REFERENCES.

- A.D. 1550-1654.
 State Papers, Elizabeth }
 ———, James I. } *Desiderata Curiosa Hibernica.*
 ———, Charles I. }
 A.D. 1567-1585.
 Hooker's 'Account of Ireland.' *Holinshed's Chronicles.*
 A.D. 1596.
 Spencer's 'View of Ireland.'
 A.D. 1599.
 Stafford's 'Pacata Hibernia.'
 A.D. 1607-1610.
 Sir John Davis's 'Letters to Lord Salisbury.'
 A.D. 1608-1619.
 Ulster Plantation Scheme. }
 Pynnar's Survey of Ulster. } . . *Harris's Hibernica.*
 Philips's Letter to Charles I. }
 A.D. 1619-1648.
 Rushworth's Historical Collections.
 A.D. 1640-1658.
 Scobell's Acts and Ordinances.
 A.D. 1654-1685.
 Petty's, Down Survey. . . . *Custom House, Dublin.*
 ———, History of Down Survey. *King's Inns, Dublin.*
 ———, Political Tracts.
 A.D. 1654-1703.
 Courts of Claims Decrees: *temp. Cromwell, Chas. II., Ann.*
Offices of Irish Courts of Chancery and Exchequer.
 A.D. 1662-1703.
 15th Report of the Irish Record Commissioners.
 A.D. 1701-1703.
 Sales at Chichester House. . . . *Royal Dublin Society.*
 A.D. 1709-1770.
 Howard's Popery Cases.
 A.D. 1703-1811.
 Denys Scully's 'Statement of the Penal Laws.'

NOTE IV.

LEGISLATION TOWARDS IRELAND.*

THE following is a short statement of those alterations, already alluded to as affecting the general coasting trade of the United Kingdom, but more especially the transport of produce from Ireland, which were introduced into the Navigation Act of 1849 during its progress through Parliament.

The Bill, as originally presented to the House of Commons, on the 16th of February, 1849, contained, in its 2nd and 10th sections, provisions which authorized all foreign vessels, of the burden of one hundred tons or upwards, to carry any goods or passengers coastwise, from or to any port or ports of the United Kingdom.

The 11th section of that Bill was as follows:—

“Be it enacted, that no goods or passengers shall be carried coastwise from one port of the United Kingdom to another, or from the United Kingdom to the Isle of Man, or from the Isle of Man to the United Kingdom, except in British ships: *Provided always, that this shall not extend, to prevent the carriage coastwise of goods in*

* See page 27, *ante*.

foreign vessels, of the burden of one hundred tons or upwards, arriving from or departing for parts beyond the seas, in manner hereinbefore provided for, or to prevent the conveyance of passengers in such vessels."

The Bill, as amended in Committee, and re-introduced into the Commons on the 26th of March, 1849, as brought up to the Lords on the 24th of April, 1849, and as it received the royal assent on the 26th of June, 1849, omitted all those provisions which authorized foreign vessels, of the burden of one hundred tons or upwards, to transact the coasting trade of the United Kingdom; and proceeded at once, in the 2nd and 7th sections, to enact that all the coasting trade of the United Kingdom shall be carried exclusively in British ships, navigated through the whole of every voyage by a British master, and manned exclusively by British seamen. The second section of the Navigation Act,* as finally passed, is in the same words as the first portion of the 11th section of the Bill as first introduced, omitting the concluding portion printed above in Italics.

The foregoing history of the progress of the last English Navigation Act, so far as it affects the produce of Ireland, resembles in some respects the following accounts of a former Navigation Act, and

* 12, 13 Vict., c. 29.—A.D. 1849.

of the Act which prohibited the importation into England of Irish cattle :—

“The Act of Navigation,* at the Restoration, included Ireland upon the same footing as England. It was not until twelve years afterwards, that the exception crept in by a single clause in another Act,† which probably was passed at the desire of some merchant, without any person caring about it. The next prohibitory law, which declared the importation of Irish cattle a nuisance, was a contested job between the Dukes of Ormond and Lauderdale. Afterwards it became the fashion to pass Acts against Ireland, which nobody had the knowledge or liberality to oppose. In the full perfection of this spirit it was, that a bill which passed in Ireland in 1759, for restricting the importation of damaged flour, was thrown out in England at the instigation of a single miller at Chichester.” ‡

The following is an account, given by another English writer, of the progress of the English “Act against importing cattle from Ireland and other parts beyond the seas;” which declared, “that such importation is a public and common nuisance, and shall be so adjudged, deemed, and taken, to all intents and purposes whatsoever.” §

“The King was sufficiently sensible of the mischiefs that would arise from the prohibition of Irish cattle, and

* 12 Car. II. c. 18. Engl.—A.D. 1660.

† 25 Car. II. c. 7. Engl.—A.D. 1672.

‡ A. Young's ‘Tour in Ireland,’ Vol. II., part ii., p. 178.

§ 18 Car. II. c. 2, Engl.—A.D. 1666.

declared publicly his dislike to the Act; making the solemnest professions that he could not give his assent to so unjust a thing. This did not prevent its passing readily through the Commons. Its passage would have been much quicker, if it had not been for some blunders in the clauses, put in by the committee, in the heat of their zeal to ruin Ireland; the absurdities of which were so set forth on the report, that the Bill was recommitted.

"But all the Irish got by that delay and those amendments was, to be undone in more congruous terms, and in a more sober method. The violence and spirit with which it was carried through the House, was not unlike that which raged in 1641. No reasoning or arguments were heeded, or attempted to be answered; and when Lord Anglesey and others laboured in private discourses, to rectify the mistakes of such as were most furious in that affair, it appeared, clearly enough, that the Bill was carried on more out of wantonness, and a resolution taken to domineer over that distressed kingdom of Ireland, than any real belief it would raise their rents, of the decay of which they complained, and groundlessly published the importation of Irish cattle to be the cause.

"The Lords made some amendments in the Bill, and struck out a proviso put in by the Commons, allowing cattle to be brought in from Scotland; which appeared to be so contrary to the intent of the Bill, and so unequal a treatment of the two nations, that it was after a long debate rejected."*

* Carte's Ormond, Vol. II., book 6. The 'Ecclesiastical Titles Bill,' as originally introduced (Feb., 1851), prohibited any assumption of territorial titles, either by Scotch Episcopalians, or by Irish Catholics. A proviso, subsequently added, will exempt the

The Bill was supported by the Duke of Buckingham, and the Lords Ashley and Lauderdale, actuated by their national antipathies against Ireland, and by personal enmity towards the Irish Duke of Ormond, and his son, Lord Ossory.

“The first day the body of the Bill came to be debated in the House of Lords, the Duke of Buckingham took the liberty of making reproachful reflections on the Irish; and said, that none were against it, but those who had either Irish estates or Irish understandings. There is nothing so ridiculous, or imprudent, or hard to be forgiven as national reflections; and the Duke, though sharply reproved for those words by the Lord Chancellor, had yet no public rebuke from the House. The Lord Ossory thought he highly deserved some further chastisement; and, after the House broke up, demanded satisfaction of him the next day in Chelsea Fields. The Duke of Buckingham did not care to fight, and found means to give notice of it to the King; so that when Lord Ossory had waited in the fields above three hours, instead of his antagonist came a guard, to secure him by his Majesty's order. The Duke kept out of the way, and the next day complained of a breach of privilege to the House, which thought fit to send Lord Ossory to the Tower.

“The Bill being sent down to the Commons, with the Lords' amendments, was not proceeded in so eagerly as

Scotch Episcopalians from its operation. It will be instructive for Irishmen, of every denomination, to observe the progress of this ‘Titles Prohibition Bill,’ and consolatory to discover any better spirit towards Ireland in 1851, than prevailed with respect to the ‘Cattle Prohibition Bill,’ in 1666.

before. This coolness was occasioned by the news of an insurrection in Scotland, attended with some unlucky circumstances in other places. So that the Irish Bill was laid aside for some days, and the language at court was, that Ireland was not to be discontented, and Lord Ossory was to be sent post, to carry forces out of Ireland to Scotland. The Scotch rebels were, at this time, reported to be 4,000 effective men; but the next letters representing that they were totally routed, Ireland was then reverted to be of no importance to the Commonwealth.

“The Bill was resumed. The Commons rejected some of the amendments, and resolved to adhere to the word *nuisance*. This produced a conference; and Lord Ashley, seemingly to compose the difference, moved that it might be changed into felony or *præmunire*. Upon which the Lord Chancellor drolled very well, and said it might as reasonably be called adultery.

“The King seeing what was aimed at, and that he should otherwise have no supply, directed his servants in the Lords to consent to the word *nuisance*.*

The same English writer makes the following observations, in reference to the treatment theretofore experienced by Ireland:—

“The English seem to have never understood the art of governing their provinces, and have always treated them in such a manner, as either to put them under a necessity, or subject them to the temptation of casting off their government whenever an opportunity offered. It was this impolitic conduct which lost them Normandy,

* Carte's Ormond, Vol. II., book 6.

and all the dominions they formerly had in France. I have seen, in the registers of the Parliament of Paris, and the King of France's *Tresor des Chartres*, an infinite number of appeals and memorials of grievances, which the gentlemen and inhabitants of those provinces suffered from the English government; representing their oppressions so grievous, as is scarce to be conceived, and makes it no wonder that they embraced a favorable occasion of shaking off a yoke too heavy to be borne.

"Hence was it, that when the towns in those provinces submitted to the Kings of France, they took particular care to insert in their capitulations an express article, that in any circumstances or distress of the affairs of France, they should never be delivered back into the power of the English.

"It is not a little surprising, that a thinking people, as the English are, should not grow wiser by any experience, and after losing such considerable territories abroad by their oppressive treatment of them, should go on to hazard the loss of Ireland?" *

It will be for future English writers, to comment upon the treatment which Ireland may hereafter experience, from those English members who constitute the overwhelming majorities in both Houses of Parliament.†

* Carte's Ormond, Vol. II., book 6. .

† *Irish Lords' Protest*, June 13, 1800. "DISSENTIENT—Because the Irish Peers and Commoners will be merged in the vast disproportion of British Members, who will in fact be the legislators of Ireland. Signed, LEINSTER, &c." *Irish Lords' Journals*, Vol. VIII., p. 466.

NOTE V.

‘ RICH COMMONS—A RICH KING.’*

THAT the general wealth of a State, depends mainly upon the individual prosperity of its ‘commonfolk,’ sufficiently appears from contrasting the present condition of Ireland with that of England, and from the following comparison instituted in the reign of Henry VIII. :—

“ The most wealth and prosperity of every land, is the common wealth of the same.

“ It is a common saying, of old date—‘ As the commonfolk fareth, so fareth the king :’ that is to say—rich commons, a rich king ; poor commons, a poor king ; feeble commons, a feeble king ; strong commons, a strong king. Ergo, it followeth, a rich king and commons in England ; a poor king and commons in Ireland.

“ What common folk in all this world may compare with the commons of England ; in riches, in freedom, in liberty, welfare, and in all prosperity ? Who enricheth the king’s treasure, and repaireth his coffers, with gold,

* See page 33, *ante*.

silver, and precious stones, save the commons? Who worshippeth the prelates and the clergy of the church, save the craftye people and the rural folk of the realm of England? What common folk in all this world is so mighty, and so strong in the field, as the commons of England?

“What common folk in all this world is so poor, so feeble, so evil to be seen in town and field, so greatly oppressed and trod under foot, and fareth so evil, with so great misery, and with so wretched life, as the common folk of Ireland?

“The king's army in England is the commons. The king's army in Ireland is all such that oppress the commons.”*

* English State Papers,—A.D. 1515,—Vol. II., part iii., pp. 10, 17.

NOTE VI.

LARGE PASTURE FARMS.*

AN insecure possession of land by the occupying tenants, exposes a country to the liability of being either too rapidly depopulated or overpeopled, according to any temporary rise or fall in the value of pasture, as compared with tillage land. This proposition has been verified, by some of those remarkable changes, which have taken place in Ireland, within a period so recent as the last one hundred years.

The Encyclopedia Britanica thus described the origin of those bands of White-boys, Oak-boys, and Steel-boys, connected with agrarian disturbances in the south and north of Ireland, soon after the accession of George III., in the year 1760:—

“ A foreign demand for beef and butter having become uncommonly great, by reason of a violent cattle distemper in England and on the Continent, ground appropriated to grazing became more valuable than that

* See page 33, *ante*.

employed in tillage. The cottiers were everywhere dispossessed of their holdings, which the landlords let to persons who could afford to pay a higher rent. Whole baronies were now laid open to pasturage,* whilst the former inhabitants were driven desperate by want of subsistence. Numbers fled to the large cities, or emigrated to foreign countries.

“ The people, covered with white shirts, assembled in parties at night, turned up the ground, destroyed bullocks, levelled enclosures, and committed other acts of violence. These unavailing efforts were construed into a plot against the government. Numbers of the rioters were apprehended in the counties of Limerick, Cork, and Tipperary, and some of them were condemned and executed. In different places these unhappy wretches, instead of being looked upon as objects of compassion, were persecuted with the utmost rigor of the law.”†

After the above process of depopulation had been in operation for some years, Arthur Young made his Tour in Ireland. In the year 1779 that writer estimated the population as being then ‘ something under three millions.’

* A pamphlet called ‘Sutherland as it Was and Is, or how a country may be ruined,’ exhibits a similar, although more peaceable, depopulation of a northern county in Scotland.

“ Formerly the glens were cultivated. They are now sheep-walks. Every acre of land in the interior has been thrown into grass and heather for sheep.”—Letter of ‘Times Commissioner,’ in *Times* of 26th June, 1845.

† Article ‘Ireland,’ Vol. IX., p. 336. Dublin Ed., 1792.

Referring to the causes of the Whiteboy disturbances, he states:—

“I made many inquiries into the origin of these disturbances, and found that no such thing as a leveller or whiteboy was heard of until 1760. They began in Tipperary, and were owing to some inclosures of commons, which they threw down, levelling the ditches, and were first known by the name of levellers. At last they set up to be the general redressers of grievances; punished all obnoxious persons who advanced the value of lands, or hired farms over their heads; and, having taken the administration of justice into their own hands, were not very exact in the distribution of it.”*

With regard to the pasture farms in Roscommon, the same writer observes:—

“A great part of Roscommon, particularly from Athlone to Boyle, thirty miles long and ten broad, is sheep-walk; only patches of potatoes and corn for the workmen. Some years ago the farms were much larger than at present; for there were men who had 20,000 sheep, whereas now 6,000 or 7,000 is the greatest stock. The farms rise to 3,000 acres; few under 400 or 500.”†

He thus describes the grazing districts of Tipperary and Limerick:—

“Farms are generally large; commonly 3,000 to 4,000 acres; and they rise up to 10,000 acres, of which quantity there is one farm. This is Mr. M‘Carthy’s, of

* A. Young’s ‘Tour in Ireland,’ Vol. I., pp. 102–3.

† *Ibid.*, p. 298.

Spring House, near Tipperary; and it is, I suppose, the most considerable farm in the world.

“I had heard much of the late Mr. Keating’s farm of Garranlea, as the largest that ever was. His son gave me the following particulars of it:—

“£10,000 a year rent;
13,800 Irish acres, or
22,350 English acres;
16,300 sheep;
3,000 head of cattle;
300 horses;
500 couple of ducks;
300 turkeys;
90 hogsheads of cider a year.

“He had most of the land from Golden* to Clonmel.”†

Subsequent to the period of Young’s visits to Ireland, tillage land increased in value, through the effect of the wars with France, protective

* In Ware’s *Antiquities* (Vol. I., p. 20, *note*, Ed., 1789) it is stated, that the rich tract of land now known as the Golden Vale of Ireland, was formerly called the Plains of *Femin*; and has derived its more modern name from Golden or Gowlin, a village on the river Suir, about three miles from Cashel. The ancient name of that village was Goellyn (see Carte’s *Ormond*, vol. i., p. 265), or Gowleen, the Irish term for a fork; that instrument being descriptive of the junction of the rivers Suir and Multeen, which unite near the place. Golden is about sixteen miles distant from Clonmel. The intervening district was most densely inhabited up to the year 1846. It is now (June, 1851) fast returning to the state of sheep-walk described by Arthur Young.

† A. Young’s ‘*Tour in Ireland*,’ Vol. II., part i., p. 159.

duties, and the means which the potato and the pig afforded for paying large rackrents. The consequence was, that in the year 1841 the number of the inhabitants of Ireland exceeded eight millions. The population continued to increase up to 1846, when the value of tillage land again began to diminish, on account of the failure of the potato and the abolition of protective duties. This depreciation in the value of tillage land, and the insecurity of its tenure, will probably soon reduce the number of the population, and increase the size of the farms to about the same standards as existed some seventy years since. The operation of these causes will, no doubt, be much accelerated by the economic influences of the Irish poor law acts, aided by the increased facilities for emigrating to America.*

* "When Rome was overthrown by the Goths, under Alaric, the city was inhabited by 1760 great families, many of them possessing £150,000 a year income, who cultivated their extensive estates in Italy and Africa by means of slaves; and it appears, from an authentic record, that before one of the barbarians had crossed the Alps, no less than 330,000 acres in Campania alone, formerly under cultivation, had reverted to a state of nature, and were tenanted only by wild beasts; while the supplies of grain for the great cities of Italy were entirely derived from Egypt and Libya."—*Alison's History of Europe*, Vol. I., p. 13, Ed. 1849.

'*Latifundia perdidere Italiam.*'—Pliny, *Lib.* xviii., c. 7.

NOTE VII

SMALL ESTATES.*

“ In France small estates held in perpetuity readily fetch *forty* years' purchase; and along the Rhine the peasants do not hesitate to give £120 and £150 an acre for land, in a country far poorer than ours.”†

These statements, exhibiting the high value of a small estate whose owner is also its occupier, are fully sustained by the concurrent testimony of many modern writers, personally acquainted with those countries where properties of that nature commonly exist. But some distinguished writers,—such as Young and Laing,—have strongly condemned these small estates, upon general grounds, whilst fully admitting their extreme productiveness and high selling value. Many such admissions are to be met with, in the various works of these two most observant travellers, when describing the actual condition of different countries throughout Europe.

* See pages 57–177, *ante*.

† Tait's Edinburgh Magazine for December, 1850, p. 730.

The effect produced by the existence of a number of small properties in raising the selling value of land, may be collected from the following statements, made by Arthur Young, respecting the usual prices of land in Flanders, about the year 1787. After mentioning the prices actually paid for five small properties, and the rent of each, this writer proceeds to state :—

“The proportion of the rent to the price is scarcely $2\frac{1}{4}$ per cent. But then it is to be considered, that the landlord has his own taxes to pay out of this; when, if he states his account, he probably will not receive more than two per cent. on his capital. This I attribute to the number of small properties, and the consequent passion of the people to become proprietors. Many persons are always ready to invest their savings in land, and to retire to the cultivation of it—circumstances which ought, necessarily, to have the effect of raising the price.”*

Describing the appearance of small estates in the province of Bearn, in southern France, the same writer observes :—

“In Bearn, I passed through a region of little farms, whose appearance, neatness, ease, and happiness charmed me. It was what property alone could on a small scale effect. But the farms were by no means contemptibly small. They are, as I judged by the distance from house to house, from forty to eighty acres.

* Young's 'Tour in France,' Vol. II., p. 61.

“The country is all in the hands of little proprietors. An air of neatness, warmth, and comfort breathes over the whole. It is visible in their new-built houses and stables, in their little gardens, in their hedges, in the courts before their doors, even in the coops for their poultry, and the sties for their hogs. A peasant does not think of rendering his pig comfortable, if his own happiness hangs by the thread of a nine years’ lease.

“The property in land is, of all others, the most active instigator to severe and incessant labor; and this truth is of such force and extent, that I know of no way so sure to carry tillage to a mountain top, as by permitting the adjoining villagers to acquire it in property. In fact, we see, that in the mountains of Languedoc, they have conveyed earth, in baskets on their backs, to form a soil where nature had denied it.”*

He thus speaks of the Savoy territory:—

“In the *haut* Savoy there are no *seigneurs* (landlords), and the people are generally at their ease, possessing little properties; and the land, in spite of nature, is almost as valuable as in the lower country, where the people are poor, and ill at their ease. I demanded why? Because there are *seigneurs* everywhere.”†

Treating of Catalonia in Spain, he states:—

“Where cultivation climbs up the mountain sides, it is by the small proprietors, who purchase the property in the land from the communities of the parishes. There is no spur to industry, so great as the possession of a

* Young’s ‘Tour in France’, Vol. I., p. 87; Vol. II., p. 256.

† *Ibid.*, Vol. I., p. 539.

piece of land. The parish that will sell a waste, at a moderate price, will be almost sure to see it cultivated. But the great lord, who rarely, or never, sells any of his property, unless ruin forces him to sell the whole, is equally sure of perpetuating the deserts, which are the disgrace of his country."*

It is the same candid opponent to small estates, who has used the well-known expressions, so often cited in their favor :—

"The magic of property transforms sand into gold. Give a man the secure possession of a bleak rock, and he will turn it into a garden. Give him a nine years' lease of a garden, and he will convert it into a desert."

After a lapse of sixty years, the other great adversary to small estates, thus contrasts the present condition of Ireland with that of Flanders :—

"The peasant tenants of small farms in Ireland are sunk in misery. The peasant proprietors in Flanders, on a soil originally inferior, working on their own little farms on their own account, from generation to generation, have brought them to a garden-like fertility and productiveness, and have made the whole face of the country a garden, and a pattern to Europe."†

The same work contains these highly practical observations :—

"There is one advantage the continental working

* Young's 'Tour in France,' Vol. I., p. 661.

† Laing's 'Observations on Europe,' (1850,) p. 32.

man, who has gathered and saved a little money, has over the English working man. He can much more readily find a small piece of land, suitable to his small means, in which he can invest his capital. To possess land seems to be a natural craving in the human constitution.

“How strong and general this desire is, we saw lately, in the eagerness with which Mr. Feargus O'Connor's land scheme was taken up, by the middle and working classes. Artisans, tradesmen, people of various occupations, paid instalment after instalment to obtain a lot of land at last, by his land scheme. They were not aware, nor perhaps was Mr. O'Connor, of the legal difficulties and expenses, which must render abortive any scheme of purchasing a large estate in England, and dividing it into lots to which good title-deeds could be given, and of making over the lots severally, clear of claims and incumbrances, to the subscribers in succession, as they paid up the value by instalments.”

“Yet the scheme itself in the abstract, and apart from the conventional obstacles opposed to its fulfilment, is a good scheme, and one which Government may some day find it a sound policy to adopt or promote; in order to raise up a more numerous class, than we have now in our social body, interested by the possession of fixed property in the soil, in the preservation of peace and security, and in the defence of the proprietary rights in the land.”†

* Under the existing laws, a similar land scheme would also prove abortive in Ireland, notwithstanding any facilities afforded by the Irish Incumbered Estates Act.

† Laing's ‘Observations on Europe,’ pp. 309, 310.

But notwithstanding these and many similar testimonies, borne by those eminent writers, they appear to have each formed an opinion, adverse to the general encouragement of small estates. They differ however in the reasons, which they have assigned for arriving at the same conclusion. The one considered that a system of small estates creates an over population, and causes a mischievous sub-division of the land of a country into a number of small farms.*

But the other writer states, that :—

“ The division of the land among the children of the peasant proprietor, in consequence of the law of equal succession, does not produce the frittering down of the original estate into still smaller portions among the heirs. If the portion of land be too small to build a house and offices, and to live in the way customary among the other peasant proprietors of the country, the one heir sells his share and interest in the little estate to the other. One of the brothers, generally the eldest, takes up the whole concern—the land, house, and stock—and pays a sum of money, or an annuity, to each of the co-heirs. There is a moral check to the division of the land itself, into portions too small for subsistence, as in Ireland.

“ But although the land itself is not divided and subdivided, the value of the land is; and with effects almost as prejudicial to social progress. The value of each

* Young's 'Tour in France,' Vol. II., pp. 381, 404.

share becomes a debt on the land. The extent of this indebtedness of the small peasant proprietary, and its consequences, are fearful. It is estimated, that the amount of debts on the land of the peasant proprietary in France, would not be less in 1849 than 560 millions of pounds sterling. These mortgages represent the value of the portions of land, belonging to the co-heirs of the actual occupants of the original farms." *

The numerous writers—Foreign, British, and Irish†—who advocate the system of small estates, have satisfactorily shown, that it exercises a strong moral influence in repressing over population, and that each successive occupier usually possesses sufficient land to afford a comfortable independence.

The true objection, connected with 'a mischievous sub-division of the land,' does not arise from any well-founded apprehension, that 'the multiplication of little properties will be considered a resource against misery,'‡ but from a fear, that although each occupier would have a sufficient quantity of land, to constitute in the aggregate a good-sized farm, his estate might be inconveniently dispersed in small patches, not adjoining each other. This description of sub-division or *mor-*

* Laing's 'Observations on Europe,' pp. 97, 98.

† Passy, De Beaumont, Dupin, Say, Sismondi, Raumer, Mill, Kay, Pim, &c.

‡ Young's 'Tour in France,' Vol. II., p. 259.

cellement could, however, be effectually prevented by introducing proper regulations, in connexion with either of the plans, called the Improved Land Tenure and the New Land System. These regulations, as already suggested, might be conveniently based upon the townland division of Ireland.*

The other objection to the small estate system, arising from the 'indebtedness' of the small proprietors, has been partially provided against when presenting each of those plans. According to the plan for introducing an Improved Land Tenure, the power for the owner to encumber his property with Land Debentures, is limited to a sum not exceeding ten times the annual value, as fixed by a public Tribunal.† And according to the plan for creating a New Land System, it would be competent, at any time hereafter, to abolish the power of creating Second Class Certificates, and thus effectually prevent the land from being charged beyond a moderate amount.‡

But, in truth, all objections on the ground of 'indebtedness' apply with a much stronger force to the existing relationship of Landlord and Tenant, than to the proposed substitute of Seller and Purchaser. For, as a choice between two evils, it

* *Ante*, p. 75.

† *Ante*, p. 43.

‡ *Ante*, p. 170.

would certainly be preferable, that the occupier shall pay a large annual sum in the form of interest to his co-heirs, who will generally reside in his own locality, than that he should pay a heavy rack-rent to a landlord, who is usually a stranger to the tenant, often an absentee from the country, and sometimes loaded with debts.

Before concluding these few observations, on this extensive portion of the general Land Question, it may be right to notice, that in addition to the many high authorities favorable to the creation of small estates, the Devon Land Commissioners have expressed it as their opinion, that "the gradual introduction of a class of small proprietors, would be a great improvement in the social condition of Ireland." *

The system of small estates is no doubt the more civilized system, and was that which prevailed in the British Islands, and throughout most of Europe, before it was superseded, for the purpose of either conquest or defence, by the more rude and warlike land system of the northern nations. The temporary necessity which existed for maintaining that military land system has been long since superseded by the establishment of standing armies.

* Devon Commission Reports, Vol. I., p. 27.

NOTE VIII.

‘ PEINE FORTE ET DURE.’*

THE following was the judgment formerly passed, ‘ without regard to sex or degree,’ upon prisoners who stood obstinately mute :—

“ The judgment of *peine forte et dure* is, that the man or woman shall be remanded to the prison, and laid there in some low and dark house, where they shall lie naked on the bare earth, without any litter, rushes, or other clothing, and without any garment about them, &c.; and that they shall lie upon their backs, their heads uncovered and their feet; and one arme shall be drawn to one quarter of the house with a cord, and the other arme to another quarter, and in the same manner shall be done with their legges; and there shall be laid upon their bodies iron and stone, so much as they may beare, and more; and the next day following they shall have three morsels of barley bread without any drink, and the second day they shall drink thrice of the water that is next to the house of the prison, except running water, without any bread; and this shall be their diet until they be dead. So as they shall die three manner of wayes;—*Onere, Fame, et Frigore*,—by weight, famine, and cold.”†

* See page 60, *ante*. † Coke’s Inst. II.—West. 1, c. 12.

The like sentence is thus given in Norman French, by another legal writer :—

“ They were to be put, *en divers measons bases et estoppes, que ils gisent par la terre tous nuds forsque leur braces, que il mettroit sur chacun deux tant de fer et poids quils puissent porter, et plus, issint quils ne puissent lever, et quils naver ascun manger, ne boire, si non le plus pier pain quil puissent trouver, et de leau plus pres al gaole, except eau courant, et que le jour quils ont pain quil nayent de leau, et e contra, et quils gisent issint tant quils furent morts.*”*

There were many instances of persons, who had the resolution to undergo that terrible death.†

This ‘strange and stupendous punishment,’ sanctioned by the usage of many ages, was not abolished until the reign of Geo. III., when it was enacted, that a refusal to plead to an indictment of felony should be treated as a plea of Guilty.‡ Under this law, two obstinate mutes were executed.§ In the following reign, the Court was authorized, in such cases, to enter a plea of Not Guilty.||

This single instance of a beneficial change, will suffice to show that an ancient abuse should not be sustained; simply because “it was at the common law,—which is the absolute perfection of reason.”

* Reeves's Hist. of Engl. Law, Vol. III., p. 250.

† Blackst. Comm., Vol. IV., p. 325, n.

‡ 12 Geo. III., c. 20, Engl.; 13, 14 Geo. III., c. 16, Ir.

§ Th. Co. Litt., Vol. III., p. 559, n. B.

|| 7, 8 Geo. IV., c. 28; 9 Geo. IV., c. 54.

NOTE IX.

PETITION OF IRISH LANDOWNERS.*

AT a Meeting of Proprietors, and persons interested in the Land of Ireland, held in the Royal Dublin Society House, Kildare-street, on Saturday, the 20th of April, 1850,

Sir THOMAS STAPLES, Bart., in the Chair,

It was unanimously Resolved :—

“ Firstly—That the principle of Sir John Romilly’s Securities for Advances Bill, for permitting loans by means of Debentures or Certificates, charged upon lands sold by the Incumbered Estates Commissioners, ought to be extended to all persons, who shall obtain the assent of the Commissioners for that purpose.

“ Secondly—That any person, who may think fit to petition the Commissioners for a sale and conveyance of his estate, and who shall fully satisfy them as to his title, ought to obtain such a conveyance, giving a parliamentary title, as is now given to a purchaser in their court.

* See page 99, *ante*.

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“Thirdly—That Mr. HENRY PRITTIE and Mr. VINCENT SCULLY be requested to act as Honorary Secretaries, and to prepare a Petition to both Houses of Parliament, in order to carry into effect the foregoing objects; and that this Meeting do adjourn until the 22nd instant, at three o'clock, p.m., for the purpose of considering such Petition.”

At the Adjourned Meeting the Petition was considered and adopted, and within a very few days it was most numerously signed by many large proprietors and other persons interested in Irish land, without distinction of class. It was presented by Mr. H. A. Herbert, M.P., to the House of Commons and ordered to be printed with the votes. It was afterwards presented by Lord Monteagle to the House of Lords.

The following is a copy of the Petition :—

“*The Petition of the undersigned Proprietors, Incumbrancers, and other Persons interested in the Land of Ireland :*

“SHOWETH—That the practical effect of the Irish Incumbered Estates Act of last Session, giving a parliamentary title to a purchaser, has been, to render it impossible for any Irish proprietor to sell his estate, except through the intervention of the Commissioners appointed for the sale of Incumbered Estates.

“That the effect of the proposed Securities for Advances Bill, creating parliamentary Debentures, or Certificates of Charge, if passed in its present form, will

be, to render it impossible for any Irish proprietor to borrow any money upon the security of his estate.

“That the proposed Bill is calculated to aid only the purchasers of those Irish estates, which are so deeply incumbered as to render it necessary that they shall be sold by the Commissioners appointed for the sale of Incumbered Estates.

“That the Bill gives no assistance or facilities whatever to that numerous class of Irish proprietors who are not at present deeply embarrassed, and whose estates are not incumbered to an amount equal to one half of their actual value.

“That the Bill, if passed in its present form, would do very great injustice and injury to all that class of proprietors, by rendering it no longer possible for them to raise money for the payment of their debts, except by having their lands sold in the Incumbered Estates Court.

“That the effect of such additional sales would be to increase greatly the present glut of land in that court, and thereby reduce the selling prices to mere nominal sums; thus, in effect, confiscating Irish estates, defeating the professed object of the proposed Bill, and most seriously injuring all those landowners and incumbrancers whom it is intended to serve.

“That by extending the principles of the Bill to all proprietors of Irish estates, and by creating a more convenient and current class of Land Debentures or Certificates of Charge, the Bill might be so improved as to confer great benefits, not only upon those Irish proprietors and their creditors, whose estates will be sold by the Incumbered Estates Court, but also upon that other class of proprietors whose estates are incumbered to an amount less than one half of their actual value.

“ That the principle of raising money by convenient Land Debentures or Certificates, has been already beneficially applied in other instances ; and that if such facilities were now afforded to the landowners of Ireland, many of them would be thereby enabled to supply themselves with sufficient capital, not only to pay off their existing debts, but also to give much encouragement to their tenants, and increased employment to the laboring population of Ireland.

“ That the debts due by Irish landowners have been greatly increased, and in some instances altogether created, within the last five years, by some imperial measures passed within the same period, the effect of which has been, to reduce the pecuniary resources of all classes in agricultural Ireland, and, at the same time, to diminish the value of all Irish estates ; and that, in the midst of all this embarrassment and pressure upon Irish proprietors, a sudden and enormous glut in the Irish land market has taken place, created by another imperial statute of a most novel and stringent character.

“ That the principles of the proposed Bill should be now extended to those estates which owe less than one half of their value, so as to enable the proprietors to pay off their debts by means of convenient Land Debentures, or Certificates of Charge ; but, for various reasons, petitioners apprehend it would at present also be necessary that some Government assistance or accommodation, of a very trifling and temporary character, shall be afforded to that class of proprietors, in order to enable them to induce, either their creditors or some other capitalists, to accept of such Debentures or Certificates.

“ That there are many ways, in which such government aid might be given in a just, safe, and effectual

form, without the possibility of any inconvenience or loss whatever, and even with a certainty of profit to the Imperial Exchequer.

“That, as one of such modes, the value of any estate might be ascertained, and its title investigated by a government officer, and that transferable Debentures, to an amount not exceeding one half of the ascertained value, might then be charged thereon in favor of the government, repayable at stated periods, but with a power to the government to enforce the repayment of the entire amount by means of a summary sale of the estate, at the end of one or two years from the time of the advance, unless in the meantime the proprietor shall have procured some person willing to accept a transfer of all the Debentures.

“That in times of commercial difficulty and pressure, not so severe as are now felt by the landed interest in Ireland, and not owing to any legislative interference, but to over-speculation amongst the mercantile classes, large pecuniary advances were frequently made, upon personal and perishable security, to the merchants, manufacturers, and traders of England, of Ireland, and of the United Kingdom, by the English, the Irish, and the Imperial Parliaments.*

“That in the year 1811, one of those advances, to the extent of six millions, was authorized by the Imperial Parliament to be made to the mercantile classes, ‘at a

* See the Acts of 33 Geo. III., c. 29, Engl.; 33 Geo. III., c. 52, Ir.; 51 Geo. III., c. 15, U. K.; and 1 Geo. IV., c. 39, U. K., which respectively authorized government advances to the extent of £5,000,000, £500,000, £6,000,000, and £500,000; to the commercial classes of England, Ireland, and the United Kingdom.

time when the Exchequer was in a sinking state, with an increasing war expenditure;' and that the sums so advanced, 'after having proved the salvation of many opulent and respectable individuals, were afterwards completely redeemed, without a single defaulter, and with a positive gain to government of several thousands of pounds.'*

"That the Parliament of Ireland being now united with that of Great Britain, the duty has devolved upon the Imperial Legislature to give to the landed interest of Ireland, in its 'present peculiar difficulty and pressure,' all that 'assistance and accommodation' which may be safely granted, 'on due security being given for the payment of the sum advanced, within a time to be limited,'† in like manner, and upon the same principles, as government aid was often heretofore granted to sustain the mercantile classes.

"That in whatever form a government aid, however small, may be given, it would at once dissipate the existing panic and pressure, and restore confidence in Irish securities and loans, to an extent sufficient to enable a large body of the existing Irish proprietors to retain possession of their properties, and ultimately disencumber them altogether, and thus materially assist the legitimate operation of the Incumbered Estates Act.

"That there are analogous instances, in which some European States have, with eminent success, afforded Government aid, to retrieve and sustain their landed interests, under circumstances of depression similar to those now existing in Ireland.

* Alison's History of Europe.

† Preamble to the Act of 51 Geo. III., c. 15.

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“ That wherever the old Irish Proprietor is able to hold his ground, it can answer no useful object to root him out, for the mere purpose of planting a new Incumbered Proprietor in his place.

“ That the principle of the Incumbered Estates Act should be extended, so as to enable any proprietor, wishing to sell his estate, to have the title investigated by a competent legal tribunal, and a parliamentary conveyance executed to the purchaser.

“ That the principle of the proposed Securities for Advances Bill might also be beneficially extended, so as to place in future all landowners, in a position to offer for their debts such simple and transferable securities, as may be easily and inexpensively enforced and realized out of their own interests in their estates, immediately after default in payment; and that this desirable object might be effected, by means of convenient Land Debentures or Certificates of Charge.

“ YOUR PETITIONERS THEREFORE HUMBLY PRAY—

That the Securities for Advances Bill may be passed by your honourable House, in such improved form as shall appear best adapted to attain its proposed object, of effecting more advantageous sales of those estates which are to be sold by the Irish Incumbered Estates Court.

“ And that at the same time the Bill may be so altered, as not to inflict any injustice or injury upon those proprietors, whose estates have not yet been brought into the Incumbered Estates Court; and that its principles may be so extended, as to afford due and proper facilities to all proprietors to raise money,

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by means of Land Debentures or Certificates, in the most simple and convenient form, to be charged upon their estates, and to be payable at certain stated periods.

“ And that such additional assistance or accommodation, as shall appear just and necessary, may be given to those proprietors whose estates are incumbered to an amount less than one half of their actual value; either by means of some small temporary advance or guarantee of interest on the part of the government, or in such other manner as your honourable House may think fit.*

“ And that such other measure or measures may also be passed, as your honourable House shall consider best calculated to enable any landowner to sell and dispose of his estate in a cheap and effectual manner, or to give simple and available securities for his debts, and thus avert hereafter the recurrence of any crisis similar to that which exists at the present time.

“ And your Petitioners will ever pray.”

* Before the Petition was presented, this portion of its prayer was altered, in compliance with a parliamentary regulation, relating to petitions involving advances of public money.

NOTE X.

BRITISH SETTLERS—IRISH TENANTS.*

THE progress of each confiscation in Ireland has been invariably aided, by a cotemporaneous infusion into the English mind of some very mistaken prejudices, favorable to a new plantation of British settlers, and adverse to a continuance of the old Irish tenants. But the result of each successive plantation has always exhibited distinct proofs, that even whilst struggling against the most discouraging odds, there is no tenant more industrious than the indigenous Irishman, or better able to pay a high rent for his farm.

The truth of this statement sufficiently appears, from those reluctant testimonies, which have at various intervals been borne by English officials, to the interested preference always given to Irish tenants; even by those English undertakers who had obtained large grants of Irish land, upon the express terms and undertakings that they should

* See page 183, *ante*.

expel the ancient population, and replant the country with English tenants.

“ When the English Pale was first planted, by Henry II. and his immediate successors, all the natives were so clearly expelled, that not one Irish family had as much as an acre of freehold, in all the five counties of the Pale.” *

Nevertheless it appears that in the reign of Henry VIII.—

“ The most part of all the English tenants had avoided the land; and all Englishmen’s lands, unto little or nought, were occupied and inhabited with Irish folk and Irish tenants.” †

To the same effect is the statement made, in the subsequent reign of Elizabeth, by the private secretary of Lord Deputy Grey :—

“ The great men had grants made to them at first by the kings of England, in regard that they should keep forth the Irish; but now, instead of keeping out the Irish, they do not only make the Irish their tenants in those lands, and thrust out the English, but also some of themselves become mere Irish. It is very strange that the English being so many, and the Irish so few as they were then left, the few should draw the many unto their use.” ‡

* Sir J. Davis’s ‘ Letter to Lord Salisbury.’

† English State Papers, Vol. III., part iii., p. 12.—A.D. 1515.

‡ Spencer’s ‘ View of Ireland.’—A.D. 1596.

In the same reign of Elizabeth, renewed efforts were made to extirpate the native population, from the four large counties of Munster included in the Desmond forfeitures, and to plant those counties with English tenants. The progress of these efforts is thus described, by one of the most active participators in those confiscations :—

“ The worser sort of undertakers have much hurt the country, and discouraged many from the voyage. They will not let for any term above twenty-one years, or three lives, and they demand for rent twelve pence the acre. They find much profit from the Irish tenants, who give them the fourth sheaf of all their corn, and sixteen pence yearly for a beast's grass, besides divers other Irish accustomed duties, so that they care not although they never place an Englishman there. But the better sort of undertakers, being many good knights and gentlemen of great worship, do seek by all means possible to plant their lands with English, more according to the meaning of her Majesty's grant. They offer to any man three hundred acres, by lease for one hundred years, for six pence the acre, without a fine.” *

Notwithstanding the very encouraging terms, thus held out to English settlers under those Desmond forfeitures, the result was, that the native Irish population were found to be the more profitable class of tenants, and were eventually suffered

* Payne's 'Brief Description of Ireland : '—A.D. 1589. See *ante*, p. 201, n.

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to re-occupy nearly the whole of the lands; although the ownership continued to belong to the great English undertakers, from whom many of the existing titles are derived.

In the following reign of James I. a more methodical system was pursued, for confiscating the six counties of Ulster included in the O'Neill forfeitures, called the Ulster Plantation, and for planting the greater portion of those counties with British tenants. Some years after those confiscations had been completed, a government surveyor was employed to examine each property, and to report upon its actual state. That officer thus complains, that some of the London companies who had obtained large tracts of the confiscated lands, had not fulfilled the terms of their grants—by removing the old Irish population, and replacing them with British tenants :—

“ There are five of the properties assigned to the several companies which are not yet estated to any man, but are in the hands of agents; who, finding the Irish more profitable than the British tenants, are unwilling to draw on the British.” *

In describing the condition of 6,420 acres, which had been granted to the Ironmongers' and the

* Captain Pynnar's 'Survey of Ulster;'—A. D. 1618-'19. Harris's *Hibernica*, p. 237.

Mercers' Companies, the same officer reports to James I.—

“ Here is an infinite number of Irish upon the land, which give such great rents that the English cannot get any land.”

“ The tenants pay such dear rates for the land, that they are forced to take Irish tenants under them to pay the rent.” *

In the succeeding reign, the agent employed by the London Corporation to superintend their portion of the confiscated estates, addressed a letter respecting the course pursued by his employers, of whom he thus complains to Charles I. :—

“ They (the Londoners) have omitted the principal point of their grant, which concerned the safety of the country; the fundamental point being, the avoiding of natives, and planting wholly with British. But they find the natives willing to overgive rather than remove; and that they cannot reap half the profit by the British which they do by the Irish, whom they use at their pleasure.” †

The merciless manner in which these Ulster confiscations were carried out, and subsequent efforts to confiscate other districts of Ireland, were the proximate causes of the general rebellion in

* ‘ Survey of Ulster.’—Harr. Hibern., p. 228.

† “ A Letter from Sir T. Philips to King Charles I. concerning the Plantations of the Londoners.”—Harr. Hibern., p. 246.

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1641, which afforded a foundation for creating further forfeitures, under the English statute called the 'Adventurers Act.'*

* 16 Car. I., c. 33. Engl.—A.D. 1642.

The following are some of "The heads of the causes which moved the northern Irish to take arms :—*anno* 1641."

"Many thousands of the natives were expulsed out of their possessions, and as many hanged by martial law, without cause, and against the laws of the realm; and many of them destroyed and made away by sinister means and practices.

"Half the realm was found to belong to his Majesty, as his ancient demesne and inheritance, upon old feigned titles of three hundred years past, by juries, against law, their evidence, and conscience, who were corrupted to find the said titles, upon promise of part of those lands so found for the King, or other reward; or else were drawn thereunto by threats of the judges in the circuits, or by heavy fines, mulcts, and censures of pillory, stigmatizings, and other cruel and unusual punishments."—See Original Paper, *Desiderata Curiosa Hibernica*, Vol. II., pp. 81, 82.

The mode in which the King's title was found by juries, upon a special commission into the counties of Monaghan, Fermanagh, and Cavan, can be collected from the letters written by Sir John Davis to his patron Lord Salisbury, in order that "your lordship may understand upon what grounds we have proceeded, especially in that county where your lordship's precinct doth lie."

Sir John Davis obtained 4,000 acres of these forfeited estates. He was one of the most active commissioners in procuring the findings by the juries, and presided as judge for their subsequent enforcement.—*Harr. Hibern.* pp. 132, 162, 199, 221.

The true character of the proceedings afterwards taken, preparatory to similar confiscations of four counties in Connaught, and of the county of Tipperary, appear from a letter written by "The Lord Deputy (Strafford) and Commissioners of Plantation to

These plain proofs, extracted from reluctant witnesses testifying to undoubted facts, should

Mr. Secretary Coke." That letter, dated the 25th of August, 1635, from Portumna in the county of Galway, states, *inter alia* :—

" In this county the jury, two only excepted, remained resolute in their averseness to find the King's title. We then bethought us of a course, not only against the persons of the jurors, but also against the sheriff. We fined the sheriff in a thousand pounds, and bound the jury to appear at the Castle Chamber, where we conceive it is fit that their pertinacious carriage be followed with all just severity. There is now a fair opportunity to lay a sure foundation for reducing and securing this county of Galway, by fully lining and planting it with English; which could not be thoroughly done, if the pretended owners of land in this county, have not a greater proportion taken from them, than is appointed by the Articles of Plantation to be applied to his Majesty's use in the other counties. We have therefore resolved, to order the King's learned counsel to put the King's title into a legal proceeding; which we conceive may be, in a fair and orderly way, by an Exchequer proceeding to seize for his Majesty the lands of the jurors, and of all who shall not lay hold of his Majesty's grace offered them by proclamation."—*Strafford Papers*.

The grace offered by proclamation, was a permission given to the owners of Galway lands, to admit the King's title, which the jurors had refused to find. These Galway jurors were afterwards cited into the Castle Chamber (Irish Star Chamber), where each was fined £4,000, to be imprisoned until payment, and to acknowledge his offence in court upon his knees.

In Roscommon the same Lord Deputy caused the most wealthy inhabitants to be summoned, being—as he states—"resolved to have persons of such means, as might answer the king, a good round fine in the Castle Chamber, in case they should prevaricate."—*Ibid*. Addressing that jury in person, he assured them,

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suffice to convince unbiassed persons of the superior industry, frugality, and rent-paying ability of the Irish tenant.

It is, however, well known that the very severe measures, used in effecting the Plantation of Ulster, were comparatively successful in expelling many of the former Irish occupiers, and in substituting for them British tenants; and it may perhaps be supposed, that owing to this British Plantation, the land of that province has ever since that period been better cultivated, and producing better rents, than the land in other parts of Ireland. Were such the real result, it would be no more than the natural consequence of those encouraging leases, which the Ulster Plantation Scheme had required the undertakers to grant to their British tenants.* But it must be remembered, that three counties of Ulster—Antrim, Down, and Monaghan—were not included in those Ulster forfeitures; and that even in the six counties to which they did extend, some portions of the land

that the principal motive of his Majesty in thus looking into his titles, was “the princely desires he had to make them a rich and civilized people, which could not by any so sure and ready means be attained as by a Plantation. With which I left them marvellous much satisfied; for a few good words please them more than you can imagine.”—*Strafford Papers*.

* See Harr. Hibern., p. 123.

continued in the possession of the former occupants; who, notwithstanding many discouragements from local proprietors, have gradually gained upon the British settlers, and are at the present day at least their equals in all industrial pursuits.

It may also be useful to know the opinions, which a celebrated English agriculturist had formed of the province of Ulster in the year 1776, when the inhabitants who were of British origin, bore a much larger proportion than they do at present to those of Irish descent. The following are some of the observations made by this writer, in describing the actual condition of that province :—

“ Change the scene, and view the North of Ireland. You there behold a whole province peopled by weavers. It is they who cultivate, or rather beggar the soil, as well as work the looms. Agriculture is there in ruins. It is cut up by the root; extirpated; annihilated. The whole region is a disgrace to the kingdom. All the crops you see are contemptible; are nothing but filth and weeds. No other part of Ireland can exhibit the soil in such a state of poverty and desolation. A farming traveller, who goes through the country with attention, will be shocked at seeing wretchedness, in the shape of a few beggarly oats, on a variety of most fertile soils, which, were they in Norfolk, would soon rival the most fertile lands in that county.”

“ Literally speaking, there is not a farmer in a hundred miles of the linen country in Ireland. They sow their land with successive crops of oats, until it does

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not produce the seed again, and they leave it to become grass as it may, in which state it is under weeds and rubbish for four or five years. Such a wretched management is constant destruction to the land. None of it becomes improved, unless from a state of nature; and it does not produce a tenth of what it would if cultivated by farmers. As land thus managed does not yield rent, they depend for that on their trade. If linen sells indifferently, they pay their rents indifferently; and if it sells badly, they do not pay them at all. Rents, in general, at their value, being worse paid there than in any other part of Ireland.

“Where agriculture is in such a state of ruin, the land cannot attain its true value; and, in fact, the linen counties, proportioned to their soil, are lower let than any others in Ireland. If I had an estate in the South of Ireland, I would as soon introduce pestilence and famine, as the linen manufacture upon it; carried on as it is at present in the North of that kingdom.”*

It thus appears, how erroneous it would be to suppose that the British settlers in Ulster, were always, as a class, either better farmers or better tenants than the original occupants of Ireland.

If further proofs were requisite, to establish the superiority of the Irish tenant upon his own soil, abundant evidence could be produced from the same impartial writer, who has thus expressed his opinions respecting the tenantry of Ireland.

* A. Young's 'Tour in Ireland,' Vol. II., part ii., pp. 162, 163.

"It is, from the whole, evident that they are uncommon masters of the art of overcoming difficulties, by patience and perseverance. Give the farmer of twenty acres in England no more capital than his brother in Ireland, and I will venture to say he will be much poorer; for he would be utterly unable to go on at all."*

He thus describes efforts which had been made, to plant some German Protestants in Ireland:†—

"A few considerable landlords, many years ago, made the experiment of fixing, at great expense, colonies of Palatines on their estates. Some of them I viewed, and made many inquiries. The scheme did not appear to me to answer. They had houses built for them; plots of ground assigned to each, at a rent of favor; assisted in stock; and all of them with leases for lives from the head landlord. The poor Irish are very rarely treated in this manner; and when they are, they work much greater improvements than are common amongst these Germans.

"I am convinced that no country, whatever state it may be in, can be improved by colonies of foreigners."‡

Some English owners of Irish estates are again indulging in the expensive experiment, of endeavouring to improve their lands and repair their

* A. Young's 'Tour in Ireland,' Vol. II., part ii., p. 23.

† During the period of the No-Popery laws, many statutes were passed encouraging foreign Protestants to settle in Ireland.

‡ A. Young's 'Tour in Ireland,' Vol. II., part ii., pp. 24, 25.

rent-rolls by encouraging, upon a reduced scale, a new plantation of British settlers in Ireland.

It is not necessary for the present purpose, to mention the particular circumstances of any cases of this description, which are still in the progress of trial; but the accounts of two practical experiments, made in the course of the last century, may be useful in order to assist the judgments of some Irish proprietors, in deciding between the British settler and the Irish tenant.

The following is the account of an experiment, to locate British settlers in the county of Cork:—

“ Mr. Townshend, wishing to improve his estate, a considerable part of which consisted of mountain, engaged two Sussex farmers (Messrs. Crumpe and Johnson) to come over to Ireland and view the lands. They both came over, examined the land, and hired a tract; for some time at no rent, or a very small one, and after that at a rent named and agreed to. The men returned; settled their affairs in England; bought very fine horses; embarked all their stock, implements, &c., and came over under circumstances of great but useless expense. When they got the land, houses and offices were built for them in a most complete style; and, amongst others, a barn, 100 feet long and 37 broad; an exceedingly ill-judged expense, the result of bringing merely English, perhaps mistaken, ideas into Ireland. These buildings being executed at the landlord's expense, but the tenants drawing the materials, they began the improvement.

The undertaking went on for four years, but was then concluded in the way one might have expected: the men were ruined; and Mr. Townshend suffered considerably, by the expenses of the undertaking rising greatly beyond what he had ever thought they could amount to." *

The following is the result of an experiment, made about the same period with Irish tenants:—

"Sir William Osborne, who resides near Clonmel in the county of Tipperary, has made a mountain improvement which demands particular attention, being upon a principle very different from common ones.

"Twelve years ago he met with a hearty-looking fellow of forty, followed by a wife and six children in rags, who begged. Sir William questioned him, upon the scandal of a man in full health and vigor supporting himself in such a manner. The man said he could get no work. Come along with me, and I will show you a spot of land on which I will build a cabin for you; and if you like it, you shall fix there. The fellow followed Sir William, who was as good as his word. He built him a cabin; gave him five acres of a heathy mountain; lent him £4 to stock with; and gave him, when he had prepared his ground, as much lime as he would come for. The fellow flourished; he went on gradually; repaid the £4; and he has at present twelve acres under cultivation. His name is John Conory.

"The success which attended this man in two or three years, brought others who applied for land, and Sir William gave them as they applied. In this manner

A. Young's 'Tour in Ireland,' Vol. II., part i., pp. 81, 82.

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he has fixed twenty-two families, who are all upon the improving hand, the meanest growing richer; and they find themselves so well off that no consideration will induce them to work for others, not even in harvest. Their industry has no bounds, nor is the day long enough for the revolution of their incessant labour. He has informed them that they will be charged something for the land, and has desired that each will mark out what he wishes to have. They have accordingly run divisions, and some have taken pieces of thirty to forty acres; a strong proof that they find their husbandry beneficial and profitable. He has little doubt but they will take among them the whole mountain, which consists of 900 acres. He has great reason to believe that nine-tenths of them were Whiteboys, but are now of principles and practice exceedingly different from the miscreants who bear that name. This shows that the villany of the greatest miscreants is all in situation and circumstance. Employ—don't hang them. Let it not be in the slavery of the cottier system, in which industry never meets its reward; but by giving property, teach the value of it. By giving them the fruit of their labor, teach them to be laborious."*

Notwithstanding all this past experience, the doctrine of extruding from the land of Ireland its ancient races, for the purpose of inducing immigrations of British settlers, as 'a sure remedy for the Irish disease,' is again openly preached by some of the leading organs of public opinion in Eng-

* A. Young's 'Tour in Ireland,' Vol. I., pp. 170-173.

land.* Those Irish landowners, who shall adopt this British panacea, may soon learn to their cost that 'they cannot reap half the profit by the British, which they did by their Irish tenants.†

But although it is sufficiently manifest, that the British settler does not surpass the native Irishman as a profitable and improving tenant, it is equally obvious that, as a general proposition, Ireland is much inferior in point of cultivation to many parts of Great Britain. Without stopping to inquire into the various causes‡ which have contributed to produce this result, it will suffice to state,

* "The abstraction of the Celtic race, at the rate of a quarter of a million a year, is a surer remedy for the inveterate Irish disease, than any human wit could have imagined."—*Times* Newspaper, January 14, 1851.

† Letter of Sir T. Philips, cited *ante*, p. 263.

‡ The idea which some persons profess to entertain, that the superiority of dominant England over prostrate Ireland, in 'manufactures, trade, capital, and industry,' is attributable to the prevailing Protestantism of the one, and Catholicism of the other, is too absurd to admit of serious discussion. It is not consistent with some facts, lately stated by a distinguished Protestant writer:—

"The population of Prussia, like that of Britain, is mixed—Protestant and Catholic—in the proportion of about five Catholics to eight Protestants. There are 8,604,708 Protestants, and 5,294,003 Catholics. This proportion of Catholics is greater than in the United Kingdom.

"In the provinces on the Rhine the people are Roman Catholics; and in manufactures, trade, capital, and industry, are very

that for centuries past, the great mass of the Irish people have received no encouragements to improve the condition of their land, and they were for a long period positively deprived of all interest in its due cultivation.

It is unnecessary to explore further into those dreary ages, during which each successive government was occupied in carrying out new plantation schemes, for the extirpation of the native peasantry of Ireland. Upon the final failure of all these various schemes, and in order to effect the same object, the penal laws against Popery were

far in advance of any other portion or people of the Prussian dominions."—*Laing's Observations on Europe* (1850), pp. 316-400.

The same writer thus states the result of his observations, with regard to the freedom of mind and opinion, the civil and religious liberty, and the general civilization of some Protestant states:—

"Sweden, Denmark, Prussia, and all the Protestant states of Germany are, at this day, in all that regards freedom in social action, freedom of mind and opinion, more enslaved than they were in the middle of the middle ages. The union of Church and State has established an irresponsible power in the hands of the sovereigns, adverse to civil and religious liberty.

"The despotism of the East is founded upon the union of the spiritual and civil power in the same hands; on the subjection of soul and body to the same state-ruler. If the sovereigns of western Europe had been heads of the church, as well as of the state, civil and religious liberty would have been extinguished, and with it all civilization."—*Ibid.*, pp. 397-'8.

devised, and these had attained their full virulence in the reign of Anne.* Some idea of the true spirit of those laws, and of their practical effect upon the cultivation of land in Ireland, may be formed from the provisions of the first relaxing statute. By that Act, passed in the year 1772, "to encourage the reclaiming of unprofitable bogs," the inducement, for the first time held out to the people of Ireland to improve their native soil, is expressed in these words:—

"Every Papist, who shall be desirous to employ his industry and money for the improvement of the Kingdom, by the reclaiming of unprofitable bog, shall be at liberty

* The following is a summary, given by an English traveller, of the Penal Code, as it appeared to him in its relaxed state, in 1777:

1. Catholics are absolutely disarmed.
2. They are incapacitated from purchasing land:
3. And from lending money on mortgage.
4. Their estates gavel among the children.
5. If one child abjures, he inherits the whole.
6. If a son abjures, the father has no power over his estate, but becomes a pensioner in favor of such son.
7. No Catholic can take a lease for more than 31 years:
8. And the rent must be two-thirds of the full value.
9. No Catholic can have a horse worth more than £5.
10. Priests are transported, and if they return are hanged.

"The preceding catalogue is very imperfect. These laws have crushed all the industry, and wrested most of the property from the Catholics."—*Young's Tour in Ireland*, Vol. II., part ii., pp. 45, 49.

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to take a lease of any quantity of such bog, not exceeding fifty acres, and one-half of an acre of arable land, as a site for a house, or for the purpose of delving for gravel or limestone for manure, next adjoining to such bog; and to hold the same at such rent as shall be agreed upon between him and the owner of such bog, for any term not exceeding sixty-one years; any laws made to prevent the further growth of Popery to the contrary notwithstanding.”*

By other clauses in the same Act it was provided, that the lease should be void, unless one-half of the land were reclaimed within twenty-one years; that the bog should be at least four feet deep; that not less than ten acres should be reclaimed; and that the Act should not extend to any bog within one mile of a city or market town.

Those penal statutes were further relaxed in the memorable year 1782, as being ‘injurious to the real welfare and prosperity of Ireland;’† and were eventually abandoned, as having failed to effect the objects for which they were passed.

But a remembrance of all those periodical spoliations and penalties, a sense of future insecurity, and a present uncertainty of tenure, combined with a feeling that the whole government and property of Ireland, are under the control of those British functionaries who preside over its chief depart-

* 11 & 12 Geo. III., c. 21, s. 1, Ir.

† 22 & 23 Geo. III., c. 24 Ir.

ments,* still concur in discouraging the owners and occupiers of Irish land from uniting all their energies to improve its cultivation.

It would be foreign to the present subject, to

* The Chief Governor of Ireland, the Commander of the Forces in Ireland, the Inspector-General of the Irish Constabulary, the Chief Commissioner of Poor Laws in Ireland, the Commissioner of the General Valuation of Ireland, and the Chairman of the Irish Board of Works, are the heads of those six departments which exercise controlling powers over the local government and landed property of Ireland. It so happens, that amongst these functionaries there is to be found, in the present year 1851, the native of England, and of Wales, and of Scotland, but not the native of Ireland.

It would be a task of some labor, to expose fully all the practical evils, arising from a system of bureaucracy or functionarism, presided over by persons whose natural ties and interests do not identify them with the governed country. Some of those mischiefs may be collected, from the description lately given, by a philosophic traveller, of the bad effects produced by the functionary system in Continental countries. Amongst other observations, strongly condemnatory of that system, he states :—

“ In all the countries of Germany occupied by the French, the established functionaries, in every district and department of public affairs, became the willing instruments, in the hands of the French, of the most grievous exactions, contributions, and oppressions ; which, without their assistance and organization, could not have been carried into effect by the French Commissaries. The chiefs only of a few departments had to be removed, or rather to act under a French functionary ; but almost all the machinery of functionarism remained. Every man sticking to office, and quite as effective for the enemy as he had been for the sovereign of the country.”—*Laing's Observations on Europe* (1850), p. 191.

enter into any detailed consideration of the past or the present modes of governing Ireland.*

* The mode of governing Ireland, in the reign of Elizabeth, is described by the private secretary of a lord deputy of that day:—

“The governors are usually envious of one another’s greater glory; which, if they would seek to excel by better governing, it would be a most laudable emulation. But they do quite otherwise. For this is the common order of them—that who cometh next in place will not follow that course of government, however good, which his predecessors held; but will straight take a way quite contrary to the former. As if the former thought, by keeping under the Irish, to reform them; the next, by discountenancing the English, will curry favor with the Irish, and so make his government seem plausible, as having all the Irish at his command; but he that comes after will perhaps follow neither the one nor the other, but will dandle the one and the other in such sort, as he will suck sweets out of them both, and leave bitterness to the poor country; which, if he that comes after shall seek to redress, he shall perhaps find such crosses as he shall hardly be able to bear. Examples you may see hereof in the governors of late times.”—*Spencer’s View of Ireland* (1596), pp. 147, 148.

The State Paper, addressed to Henry VIII., thus describes the usual mode then pursued in Ireland for ruling a lord deputy:—

“All the currysavors, that be next of the deputy’s secret counsel, dare not be so bold as to show him the truth, for dread they might thereby stand the more out of his grace. For that cause, they follow this worldly wisdom—

Whoso’ will in court dwell,
He must learn to curry favor well—

and to laud and praise the opinion that the lord holdeth; and with crafty colors, fictions, and poesies, to justify the same, whether it be right or wrong. And so, in default of counsel, the deputy will be ruled over.”—*English State Papers* (1515), Vol. II., part iii., p. 15.

It has been a usual habit with the supporters of each successive government in Ireland, to admit all past misrule; but to assert that a decided change for the better has taken place.

It is not denied that under former governments, the *Divide et Impera* system has often prevailed.* Class was excited against class. The Celt against the Anglo-Norman; the English against the Irish; the landlord against the tenant; the Protestant against the Catholic. The object and the effect were ever the same:—to transfer the property and civil rights of the weaker classes to those of the dominant nation and creed.

Hence there arose, amongst the struggling occupiers of land in Ireland, a feeling of insecurity, independent of the additional uncertainty of their precarious tenures. And until all spirits of national or of religious discord shall have been for ever laid;

* "It is manifest that such as had the government of Ireland, under the crown of England, did intend to make a perpetual separation and enmity between the English and the Irish, pretending, no doubt, that the English should in the end root out the Irish: which the English not being able to do, caused a perpetual war between the nations, which continued four hundred and odd years."—*Davis's Discovery*, &c.—A.D. 1612.

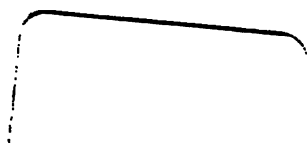
until all Englishmen shall have come to regard the people of Ireland as their fellow-countrymen, as well as fellow-subjects; until the Catholic and the Protestant inhabitants of both countries shall feel towards each other as Christian brethren, as well as fellow-Christians; until the English rulers of this United Kingdom, but distracted Empire, shall 'search the Scriptures,' and there learn that 'six things there are which the Lord hateth, and the seventh his soul detesteth—him that soweth discord among brethren;'^{*} until, in fine, there shall be 'such a complete and entire union, as will so perfectly identify the two nations, that they shall become as one nation, and there shall not exist any distinct interest between them;'[†] it will be in vain to entertain the delusive hope, that any improved system of tenure can ever secure to Irishmen a permanent interest in the land of Ireland; so that—'They shall sit every man under his vine and under his fig-tree, and there shall be none to make them afraid.'[‡]

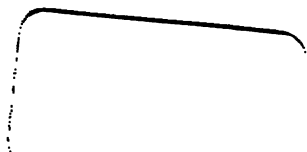
^{*} Prov., c. vi., v. 16, 19.

[†] Irish Lords' Journals, Vol. VIII., p. 464.—A.D. 1800.

[‡] Micah, c. iv., v. 4.







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